

In the context of critical arguments that directly address the debate critic's act of intellectual endorsement, the question of fiat is not especially complex. In this context, the debate judge is a decision-maker rather than a pundit, advisor, and endorser of others' choices. As for any decision-maker, the critic's own scope of authority over competitive alternatives constitutes the legitimate scope of negative fiat. After all, the critic faces directly the decision of whether to endorse the affirmative plan and they should do so if and only if endorsement of the affirmative plan is the best of the competing alternatives available to the judge.

Works Cited

- Buchanan, James. "Opportunity Cost." *The New Palgrave: A Dictionary of Economics*. Eatwell, John, Murray Milgate, and Peter K. Newman. eds. Vol. 3. 1987: 718-721.
- Lichtman, Alan and Daniel Rohrer. "A General Theory of the Counterplan." *Journal of the American Forensics Association* 12 (1975): 70-79.
- Perkins, Dallas. "Counterplans and Paradigms." *Journal of the American Forensics Association* 25 (1989): 140-149.
- Solt, Roger. "Resolving the Ambiguities of Should." *Journal of the American Forensics Association* 25 (1989): 121-139.
- Ulrich, Walter. "The Agent in Argument: Toward a Theory of Fiat." Paper presented at the meeting of the Speech Communication Association. San Antonio. November 1979. Education Resource Information Center ED170800 (1980): microfiche.
- . "The Judge as an Agent of Action: Limitations on Fiat Power." Paper presented at the meeting of the Speech Communication Association. Anaheim. November 1981. Education Resource Information Center ED210739 (1982): microfiche.

LOCATING NEGATIVE FIAT: A RESPONSE TO KORCOK

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Borrowing from the writings of Lichtman and Rohrer on counterplan theory and policy systems analysis, Michael Korcok argues that "the appropriate scope of negative fiat is the scope of the authority of the decision-maker choosing whether to adopt the affirmative plan" (50). Korcok argues that debate theories supporting unlimited negative fiat are unrealistic, because they ignore the reality that decision-makers in the real world lack the authority to solve problems by selecting from all possible alternatives. Rather, Korcok argues that decision-makers have limited choices available to them depending on their position of authority. Therefore, Korcok advocates that debate theory should recognize these limitations by confining the scope of negative fiat to the policy options available to the decision-maker who is assumed to adopt the affirmative plan.

This brief response to Korcok will critique three aspects of his position on negative fiat. First, it will assess the validity of the theoretical arguments offered by him to justify his position. Second, it will examine whether Korcok's limitation on negative fiat is consistent with promoting fair and educational debate. Third, it will consider some of the workability problems associated with debaters and judges trying to implement Korcok's solution. The response concludes that Korcok's limitation on negative fiat should be rejected.

Theoretical Validity

In large measure, Korcok bases the theoretical defense of his position on the brief "footnote thirteen" appearing in an article by Lichtman and Rohrer. Korcok assumes that this note limits the scope of counterplan fiat to only those actions that the decision-makers being addressed can put into effect. Korcok's argument is that Lichtman and Rohrer are referring to the decision-makers who the resolution assumes have the authority to enact the affirmative plan. Therefore, he concludes that Lichtman and Rohrer limit counterplan fiat to policy alternatives within the scope of authority of the agent of action assumed by the resolution or the affirmative plan.

Given the ambiguous language used by Lichtman and Rohrer in footnote thirteen and the unavailability of any detailed discussion of fiat by Lichtman and Rohrer elsewhere, it is difficult to reach any definitive conclusions about where Lichtman and Rohrer stand on this

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issue. Therefore, it is pointless to attempt a line by line refutation of Korcok's interpretation of Lichtman and Rohrer. However, articles written by Lichtman and Rohrer which appear after the publication of footnote thirteen, strongly suggest that under their policy systems approach it would be perfectly consistent for a judge to evaluate any alternative policy defended by the negative, because they recognize that the judge is not assuming the role of a real world decision-maker. Rather, the judge is evaluating policy arguments presented by competing advocates. In fact, Lichtman, Rohrer, and Hart specifically reject the categorization of their position as requiring the judge to adopt the role of a real world policy-maker:

Our recommendation that debate follow a process of policy comparison is not sustained by any analogy to role models of policymakers in the political system (which is Balthrop's core objection to our position). Rather, our analysis is founded solely on the logic of defending resolutions of policy in a format requiring a yes-or-no decision after the cessation of advocacy. Thus the status of the judge as an arbiter of policy choice and of debaters as advocates for competing policy systems is inherent in the kinds of resolutions that debaters consider and the type of decision that judges must render (234).

In the debate context, Lichtman and Rohrer assume that a debate judge should evaluate all available policy options, for this provides the most rigorous test of the desirability of an affirmative plan. Lichtman, Rohrer and Corsi state that "a policy proposition can be tested only by comparing it to alternative policies. A course of action is affirmed only if it is better than all other possibilities and rejected only if it is not as good as at least one other possibility" (228).

Even if Korcok's reading of Lichtman and Rohrer supports his view of negative fiat, his position is still problematic because it is difficult to reconcile his theory with any of the widely followed judging paradigms which view the role of the debate judge as a critic of policy argument (see Balthrop) or Strange's advocacy paradigm which views "the role of the judge as that of an individual member of the audience making a personal decision on what the government should do"(9). Under a critic of argument or advocacy paradigm, there is no theoretical basis to limit negative fiat to those policies within the abilities of the agent of action who enacts the affirmative plan, because the judge is not acting in the role of the agent of action. If the judge is an educator or impartial citizen evaluating policy arguments

from competing advocates, he/she would be open to hearing all relevant policy options available to U.S. governmental actors.

Educational Rationale

Korcok makes three valid educational arguments against allowing the negative to assume unlimited fiat. First, he claims that the notion of a universal decision-maker with unlimited alternatives is unrealistic. Second, he argues that allowing the negative to advocate unlimited fiat has the potential to lead to utopian advocacy. Third, he claims that negative counterplans which assume action by foreign governments represent meaningless choices because they do not constitute realistic options available to U. S. policy-makers. While I personally share many of Korcok's concerns, especially those relating to unlimited negative fiat leading to utopian advocacy (see Katsulas, Herbeck, and Panetta) and the irrelevance of foreign actor counterplans in U. S. policy-making (see Katsulas), I believe that his solution is too extreme, and that there are better ways to place limits on negative fiat.

The major fault that I have with Korcok's position is that it would significantly decrease the negative's ability to advocate agent counterplans. For example, under the 1998-1999 collegiate topic, "Resolved: That the U. S. federal government should amend Title VII of the Civil Rights Act of 1964, through legislation, to create additional protections against racial and/or gender discrimination," one of the most potent negative strategies was for the negative to advocate doing the affirmative plan via a Supreme Court decision or by rule-making by the Equal Employment Opportunity Commission. Under Korcok's view of fiat, neither of these counterplans would be viable strategies, because the focus of the topic is on whether Congress should enact legislation.

In my judgment, there are overwhelming educational rationales for allowing discussion of these types of counterplans. First, the topic literature discusses the desirability of enacting policies using the Congress as compared to acting through the Supreme Court or by EEOC rulemaking. Second, students learn about important concepts when these counterplans are discussed such as the separation of powers and judicial activism. Third, taking away germane counterplan ground from the negative puts them at a severe competitive disadvantage. Fourth, disallowing alternative agent counterplans will force the negative to advocate plan-inclusive counterplans using Congress as the agent of action. There are numerous reasons for why plan-inclusive counterplans destroy clash (see,

Katsulas and Herbeck). Fifth, all policies advocated by domestic U. S. governmental agents should be subject to debate, since discussion of these issues educates our students about important public policy issues and how the democratic process functions.

Finally, Korcok does not offer a very compelling educational argument to justify limiting the focus of debate to policies within the decision-making authority of one agent of action. Nor do I believe that Korcok makes a very strong argument for why his limit teaches students more effective decision-making skills. In the real world, there are numerous instances when decision-makers are required to make policy evaluations at more than one level of government. For example, members of the news media critically evaluate policy choices which span across numerous levels of government. Moreover, persons working at public policy think-tanks like the Cato Institute make policy recommendations which are not confined to one level of governmental action. U. S. citizens who participate in the democratic process are required to formulate opinions about policy choices at all levels of government. Therefore, I would argue that debate about all U. S. policy alternatives is more educational because it exposes students to crucial information about the workings of government.

Workability Questions

Korcok describes three ways that his proposed solution could be implemented. First, he suggests that debaters in a particular debate round could present arguments over the appropriate decision-maker. Unfortunately, the only example which Korcok provides to illustrate how this argumentation would occur is unclear. Korcok offers a hypothetical example of a debate where he assumes that the debate resolution calls for the Department of Defense to increase security assistance to Southeast Asia and the affirmative plan calls for the U. S. Army to send forty-seven Blackhawk helicopters to Laos. In this debate, he claims that there are arguably three decision-makers who could adopt the affirmative plan: the Federal government, the U.S. Department of Defense, and the U.S. Army. While in this example it is obvious why the resolutorial actor (U. S. Department of Defense) and the affirmative's plan agent (U. S. Army) are both legitimate decision-makers, Korcok fails to explain why it would be valid for the negative to claim that the entire Federal Government is an appropriate decision-maker.

If it is possible for debaters under Korcok's theory to argue that the appropriate decision-maker for an affirmative plan could be expanded beyond the resolutorial agent or

affirmative plan agent so as to include all federal policy-making actors, then his theory provides no clear limit on negative fiat. If the resolution mentions any domestic policy actor (e.g., Congress, Supreme Court, Department of Defense, etc.), the negative will simply re-define the focus of the topic by making arguments for why the topic implicitly calls for action by any federal policy-maker. And, by this logic, if the resolution calls for action by the United States government, what would prevent the negative from arguing that international fiat is legitimate because the United States belongs to international organizations and the United States is part of the larger world community?

Korcok's second suggestion is that the resolutorial agent could serve as the guidepost for determining who is the appropriate decision-maker for the affirmative plan. In essence, Korcok is embracing Ulrich's position that negative fiat should be limited to policies within the decision-making authority of the resolutorial agent. In my opinion, this option is clearly preferable to the above because it provides a clear bright-line for determining the scope of negative fiat. If imposed by a judge hearing the hypothetical debate on the security assistance topic, the agent of action bright-line would clearly prohibit the Missouri state counterplan, the France counterplan, and the CIA counterplan. None of these policies would fall within the authority of the Department of Defense. Therefore, if Korcok supports limiting negative fiat, Ulrich's approach seems more feasible than having the debaters engage in a theory debate about who is the appropriate actor for the affirmative plan. However, since Korcok is unwilling to advocate that judges should enforce this requirement on the debaters, and it is unlikely that negatives will willingly agree to limit their fiat in this manner, he admits that option two would devolve into option one.

Korcok's third suggestion is that the topic committee could perhaps specify who is the appropriate decision-maker for addressing the affirmative's plan when they release the topic wording. Unfortunately, Korcok provides no clear illustration of how this would be done. If the resolution clearly specifies a particular policy actor such as the Department of Defense, the U. S. Congress, or the Federal government, why is it necessary for the topic committee to stipulate who is the appropriate actor for the plan? The appropriate actor should already be readily apparent by the wording of the topic. Finally, history suggests that the topic committee is totally ineffectual at influencing debate theory beyond specifying the wording of the topic. For several years during the 1970s, the NDT issued a statement of parameters providing further elaboration on the meaning of the topic; it was uniformly

ignored by judges and debaters. I suspect that an accompanying statement defining the boundaries of fiat would be similarly ignored.

Conclusion

While Korcok raises important concerns about the problem of unlimited negative fiat, the alternative that he proposes is problematic in several respects. For many judges, the line drawn by Korcok has no theoretical grounding. A judge's range of choices are not limited by the real world decision-making authority of the agent of action because the judge's role is to evaluate policy arguments presented by competing advocates. Moreover, Korcok does not offer convincing educational arguments to justify decreasing the negative's counterplan ground in such a drastic fashion. Conceptually, Korcok's proposal is very unclear as to how debaters would establish who is an appropriate actor for enacting the affirmative plan, especially when Korcok suggests that it would be possible for the negative to argue for a higher level of actor than specified in the resolution. If this is so, then Korcok's proposal will promote a new layer of dull theory debates whenever the negative advocates a counterplan.

In conclusion, there are better ways to limit negative fiat than suggested by Korcok. For example, Solt proposes two desirable limits on negative fiat. He argues that since debate resolutions are focused on U. S. policy-making, negative fiat should be limited to the actions of U. S. governmental actors. A second limit imposed by Solt would be to require the negative to locate solvency evidence from the policy literature. Solt's view of fiat is very attractive, as it promotes fairness and education. Both sides receive the same fiat. Moreover, it focuses debate clash on germane issues relating to U. S. policy-making, and it avoids the problems of utopian and foreign fiat.

Works Cited

- Balthrop, V. William. "The Debate Judge as 'Critic of Argument': Toward a Transcendent Perspective." *Journal of the American Forensic Association* 20 (1983): 1-15.
- Katsulas, John P. *The Case Against International Fiat*. Paper presented at the meeting of the National Communication Association. New York. November 1998.
- Katsulas, John P., and Dale Herbeck. *Topical Counterplans Revisited: An Argument Against Plan-inclusive Counterplans*. Paper presented at the meeting of the Eastern Communication Association. New York. 1996.

- Katsulas, John P., Dale Herbeck, and Edward M. Panetta. "Fiating Utopia: A Negative View of the Emergence of World Order Counterplans and Futures Gaming in Policy Debate." *Journal of the American Forensic Association* 24 (1987): 95-111.
- Korcok, Michael M. "The Decision-maker." *Contemporary Argumentation & Debate: The Journal of the Cross Examination Debate Association* 19 (1999): 49-68.
- Lichtman, Alan P. and Daniel M. Rohrer. "A General Theory of the Counterplan." *Journal of the American Forensic Association* 12 (1975): 70-79.
- Lichtman, Alan P., Daniel M. Rohrer, and Jerry Corsi. "Policy Systems Analysis in Debate." *Advanced Debate* 3rd edition. Eds. David Thomas and Jack Hart. Lincolnwood, IL: National Textbook, 1987: 216-230.
- Lichtman, Alan, Daniel Rohrer, and Jack Hart. "Policy Systems Revisited." *Advanced Debate* 3rd edition. Eds. David Thomas and Jack Hart. Lincolnwood, IL: National Textbook, 1987. 231-242.
- Solt, Roger. "Negative Fiat: Resolving the Ambiguities of 'Should.'" *Journal of the American Forensic Association* 25 (1989): 121-39.
- Strange, Kenneth. "An Advocacy Paradigm of Debate." Paper presented at the meeting of the Speech Communication Association. Anaheim. November 1981.
- Ulrich, Walter. "The Judge as an Agent of Action: Limitations on Fiat Power" Paper presented at the meeting of the Speech Communication Association. Anaheim. November 1981.