exercises fiat only over the director of the Occupational Safety and Health Administration. This means that the negative's counterplan ground will be similarly restrained. However, this restraint will prevent the negative from exploring alternative, non-regulatory approaches, which might involve tax incentives, demonstration projects funded by the Department of Labor, rules for all federal contractors, etc. All of these actions require the participation of Congress or the President or other executive agencies. Since OSHA only has the authority to regulate, the only alternative that can be considered is regulation. This seems an unfortunate loss of focus on an important issue.

The 1998-99 CEDA/NDT topic provided an interesting illustration. A number of teams looked at sports franchise ownership as an example of race discrimination, and proposed extension of Title VII of the Civil Rights Act of 1964 and subsequent Equal Employment Opportunity Commission jurisdiction to cover this matter. While I am sure that the issue of discrimination in this area is an important one, the idea that an agency charged with regulating *employment discrimination* would be best suited to monitor multi-million dollar business deals is . . . silly. Negative teams who were prepared to argue that the Federal Trade Commission or some other agency would be better suited to the task had a great strategy. However, suppose that the topic had not been so fortunately worded, and that affirmatives running this case could have exercised fiat only over the EEOC. Since the latter agency can only regulate employment discrimination, that is the only alternative that could be considered.

Furthermore, the affirmative seems to give up very little by deploying such a strategy: the negative's loss of counterplan ground does not seem to carry any offsetting disadvantage to the affirmative. Presumably this would make the strategy very popular, and affirmative cases dealing with matters of regulatory minutiae might become far more common than we wish. The effect upon affirmative case choice may render this solution far too restrictive, far too easily manipulated to affirmative advantage, for it to be workable. On the other hand, the problem may not be fatal, as it will be more theoretical than real when the wording of the topic requires action at the highest levels of government (the fact that the 1998-99 topic required "legislation" did quite nicely). However, there are likely more such conundrums hidden within the opportunity cost model of counterplans. The time has come to seek them out and to begin to struggle with them. Hopefully, this forum is a start.



## REBUTTAL

**Michael M. Korcok**[1]

The logic of deliberation about whether a proposed course of action should be undertaken constrains the set of acceptable competitive alternatives to those which the decision-maker choosing whether to adopt that course of action has authority. Each of us understands that simple truth, both in our personal and pure agency capacities. The President has never decided to veto a bill before him because "the fifty states, acting in concert, could undertake this action" and you have never decided not to purchase an automobile because "my neighbor could purchase it for me." The situation is little different for columnists, pundits, and analysts commenting on public policy. Despite a wealth of opinion on the matter, none have argued that NATO should cease its air campaign against Yugoslavia because Slobodan Milosevic could, despite evidence that he would not, decide to immediately and voluntarily cease his campaign of ethnic cleansing against the Kosovars. And not even Geraldo Rivera suggested that the Congress should stop impeachment proceedings because William Clinton could choose to resign instead. But this simple piece of decision-making logic has not managed to find its way into academic debate about public policy. Missteps in thinking about negative fiat have meant that each time we have come close to grasping this component of the logic of decision-making, we have instead erred.

Please consider two examples in light of the responses. In the first example, the affirmative plan has the Security Council of the United Nations sanction Yugoslavia for its actions in Kosovo. If our general solution to fiat questions limits fiat to domestic public actors, then the most promising counterplans, Security Council actions such as approval of pending peace proposals, would be disallowed. Similarly, extending fiat to all domestic public actors enables potentially competitive alternative actions such as a decision by the Governors Bush to send the state police of Texas and Florida to Kosovo. The logic of decision-making becomes even less recognizable if our solution to fiat questions is an elimination of fiat limitations. Alternatives such as a unilateral decision by Milosevic to comply with the Rambouillet accords, the mass resignations of the Serbian military leaders,

[1] I wish to extend my gratitude to Dallas, Gina, John, and Brian for their thoughtful comments. Their responses are wide-ranging, to be sure, but they also offer a depth of consideration rarely encountered. It sure feels like I'm giving a 1AR to an excellent negative block.

a Yugoslav citizens' mass revolt against their government, and a hundred other potentially competitive but irrelevant actions obtain the status of legitimate objections to Security Council action. If our solution to fiat questions is acceptance of a few textbook nostrums about "normal political means" with "reciprocal fiat," then we will have missed the logic of decision-making entirely in favor of hopelessly vague and bad advice. Like suggestions that fiat depends on whether a counterplan is advocated in the literature, any and all of the above possibilities may or may not be acceptable quite apart from any logic of decision-making.

In the second example, the affirmative plan has Congress amend Title VII of the Civil Rights Act of 1964 to include employees of Native American businesses. If we begin from the understanding that the Courts have refused to apply Title VII protections to employees of Native American businesses because the language of Title VII does not explicitly provide for them in the context of a strong doctrine of sovereign immunity, then interesting fiat issues arise. Extending fiat to all domestic public actors pretends that there is not a basic logical difficulty in rejecting a Congressional statutory amendment because the Courts could instead choose to ignore present statutory language. An understanding that the Courts have made it clear that they will not extend protections absent explicit Congressional action astonishingly becomes an irrelevant consideration in whether Congress should undertake the affirmative plan. We might well absurdly conclude that Congress should not amend Title VII because the Courts could choose to reverse a decades-old line of precedents based upon present Title VII provisions. The Supreme Court action makes sense as a legitimate objection to statutory amendment if and only if a decision-making body with authority over both Congressional and Supreme Court action faces the choice to amend Title VII. Rejecting all fiat limitations is even more problematic. Refusing to understand that there is a decision-making logic that constrains fiat pretends that the immediate cessation of sexual harassment by managers of Native American businesses, the voluntary adoption of Title VII provisions by Native American Nations, and victims' voluntary participation in the Tribal Courts are interesting objections to Congressional statutory amendment. Finally, as above, the textbook advice is not useful.

This response is organized in two sections: several concerns with the underlying theoretical arguments and literature are addressed, and then Perkins' argument on behalf of limiting negative fiat to affirmative actor counterplans is examined.

McGee observes that the concept of "opportunity cost" is problematic: economists and economics textbooks differ substantially in their exposition of this idea. This is certainly



true and it is important. The definition offered in "The Decision-maker" captures the notion as it is properly understood in contexts of choice. Buchanan offers a simple definition of "opportunity cost" consonant with that presented: "Choice implies rejected as well as selected alternatives. Opportunity cost is the evaluation placed on the most highly valued of the rejected alternatives or opportunities. It is that value that is given up or sacrificed in order to secure the higher value that selection of the chosen object embodies" (*New Palgrave*, 719). That economists do not have a unitary conception of opportunity cost should not be surprising: many do not understand the idea and others attempt to mold the idea to allow quantitative and objective economic analyses. Aaron Wildavsky summarizes the confusion in the field of economics over the idea of opportunity cost which McGee inquires about:

> Can a doctrine be so embedded in a discipline, so integral to its essence, that practitioners rarely recognize it explicitly? So it would seem for the doctrine of opportunity cost, defined as the notion that the cost of an action can be measured only by the value of the best alternative that must be foregone to undertake such action. Although costs of opportunity appear as crucial to economics as that of party competition is to proper functioning of a democracy, a review of recent economic literature reveals very little exclusively on the subject (with the exception of a book by James Buchanan). The treatment of opportunity cost in the private sector texts is (at first) surprisingly small. In Paul Samuelson's *Introduction to Economics*, perhaps the most widely used text, he first discusses opportunity cost on page 443, in a chapter (23) amazingly titled "Implicit and Opportunity Cost Elements: A Digression." His brief discussion is fairly representative of textbooks, correctly conveying the notion that the cost of doing one thing is really sacrifice of doing some other thing. Buchanan has also mentioned this trend in texts: Opportunity cost tends to be defined acceptably, but the logic of the concept is not normally allowed to enter into and inform the subsequent analytical applications. This distinction between (1) undesirable attributes inherent in some event and (2) the highest-valued forsaken option necessary to realize that event is fundamental, for only the latter is cost as the term is used in economics.

The exposition presented in "The Decision-maker" captures the essential idea contained in these more developed treatments of the concept of opportunity cost: the value of an action is the difference between its worth and the worth of the best alternative action which would

have to be foregone. None of the responses take issue with the claim that rational decision-making consists in taking an action if and only if it is preferable to the best alternative action that would have to be foregone. The connection between the logic of decision-making and the consideration of whether to lend or withhold one's intellectual endorsement to others' choices is more complex: it is the source of the problem of negative fiat and several responses address that connection.

McGee provides several excellent reasons why debate critics ought not to be bound by the decision-maker's subjective and situated evaluation of policies. He argues that policy-makers' values, interests, and procedures ought to be subject to criticism and examination rather than merely taken as givens that constrain the evaluation of policy. This line of argument is uncontroversial. The view presented in "The Decision-maker" argues that the debaters and the critic assess and evaluate the decision-maker's choice to adopt the affirmative plan without suggesting that the evaluation is limited by the values, interests, and perspectives of the decision-maker itself. At the end of the debate, the critic is asked to lend or withhold their intellectual endorsement of the decision-maker's adoption of the affirmative plan: that decision may or may not have any relation to the decision-maker's "subjective" evaluation of the desirability of enacting the affirmative plan. I do not argue that debate critics should ask themselves: "Would Dennis Hastert and William Clinton and the Federal Government like this plan?" This conclusion does not imply, however, that the decision-maker is irrelevant. The central argument of the essay was that "Who decides?" matters because different decision-makers face different opportunity costs and since those different opportunity costs are the *only* reasons to reject the affirmative plan, one cannot assess the plan without selecting the decision-maker faced with its adoption. And the promised benefits obtainable through the exploration of alternative actors and utopian possibilities do not answer the logical constraints attendant to the evaluation of action.

Lane argues that Buchanan's conception of opportunity cost is radically subjective, unusable for others' predictions of decision-makers' choices, and wholly unsuitable for objective assessments of policy-makers' decisions. Lane reads Buchanan as arguing that consideration of the opportunity cost faced by a decision-maker is ultimately impossible, as is the subsequent evaluation of a given decision-maker's choice. She concludes that the only functional decision-maker in a debate round is the critic, since only they are able to evaluate the relevant opportunity costs of enacting the affirmative plan.



Buchanan's analysis of individual choice in a pure agency role is an attempt to untangle the logic of decision-making faced by those with exclusive authority over public policy choices. Department chairs, deans, presidents, governors, agency heads, and directors of forensics take pure agency roles over various decisions because they have exclusive authority over them. Those of us with advisory, evaluative, and observer roles for those decisions do not play a pure agency role. Buchanan clearly differentiates choice in a pure agency role from choice in a private role ("Shall I see Star Wars tonight?") and choice in a collective decision-making role ("Shall I vote for us to see Star Wars tonight?"). Debate critics could be cast as taking either of these latter roles, but that would also be a mistake: affirmative plans are public policy choices rather than private choices and debate critics are not "voting," as either citizens or legislators, for public policies. Debate critics take another role, one unanalyzed by Buchanan: they are being asked to lend or withhold their intellectual endorsement to a particular course of public action.

Lane's conclusion that debate critics take a pure agency role over decisions ranging from legislative amendment of Title VII, to foreign policy with respect to rogue nations, to environmental policy is not plausible, at least not without some connective logic. Ulrich understood the difficulty here and his solution was to have the critic pretend to be the decision-maker. But Lane accepts the arguments against role-playing and so accedes to a rejection of Ulrich's solution. Unfortunately, she does not offer an alternative solution which could hope to explain how we might graft a pure agency role on debate critics who obviously do not have anything like a pure agent's authority over the decisions they evaluate. The problem is a bit deeper than Lane will admit to: debate critics are just debate critics and they are being asked to lend or withhold their intellectual endorsement to action over which they have no authority. The solution offered in "The Decision-Maker" accepts the reality of the situation faced by debate critics and concludes that debate critics must understand that their intellectual endorsement hinges on which decision-maker faces the choice to enact the affirmative plan.

Finally, the argument made in "The Decision-maker" neither relies upon nor endorses Buchanan's full intellectual program. This position is somewhat treacherous in light of the fact that Buchanan was awarded the Nobel Prize in Economics in part for his development of the Theory of Public Choice, a set of ideas which relies fairly heavily on the logic of his radically subjective notion of opportunity cost. But if debate has, as one of its constitutive elements, the evaluation of public policy choices, then his brief is with debate as a whole

and not with the arguments made in my exposition. Furthermore, Buchanan argues that costs are properly understood as the opportunity costs of choices faced by given decision-makers. Whatever force resides in Buchanan's critique of claims to objective and predictive analysis extends to all advisors, evaluators, observers, and commentators of public policy decisions. It is at best unclear that all of us with opinions about public policy need to give up our day jobs merely because of the force of Buchanan's arguments.

Perkins observes that decision-making is rarely as simple as might have been suggested in "The Decision-maker." Multiple human decision-makers acting in collective choice situations are the norm rather than single individual decision-makers with exclusive authority over choices. He notes, for example, that voters might make different choices because they are in collective decision-making situations than individuals in private choice or pure agency situations would. That is, of course, the case. No doubt it is too simplistic to argue that the appropriate decision-maker is "the U. S. Federal Government" or "Congress" or even "the State Department." But neither Perkins nor I am sure of what, if anything, to do about that. This simplification does not seem to be debilitating to either the solution offered in "The Decision-maker" nor to how debate is practiced currently. Nor are the attendant ambiguities and argumentative complexities a sufficient reason to accept the affirmative plan agent as the appropriate decision-maker rather than alternative decision-makers the negative might offer.

Katsulas argues that Lichtman, Rohrer and Corsi should not be read as endorsing a position similar to that presented in "The Decision-maker," but should instead be read as endorsing a less restrictive notion of fiat. I disagree. There should be no doubt that Lichtman and Rohrer thought that state counterplans are illegitimate because the appropriate decision-maker (the Federal government) does not have the authority to enact them. The quotes offered by Katsulas from the subsequent literature that he uses to dispute this argument do not address fiat, but two other issues. Lichtman *et al* were concerned to argue that their development of counterplans rested on a break with simple problem-solving theories of debate. In stock issues debate, the question is whether the plan satisfies the five "stock issues" and if it does, then perhaps the plan's advantages are compared to its disadvantages. Lichtman *et al* persuasively argued that "stock issues" debate ought to be abandoned in favor of a "decision-making" conception: the plan ought to be adopted only if it is preferable to its best competitive alternative. One of their arguments was that it is educationally beneficial for debaters to analyze alternatives to affirmative plans. This was



not, for them, a question of which competitive alternatives were legitimately considered: it was merely an argument for counterplan debate.

Lichtman *et al* were also involved in a discussion about whether the negative team could offer multiple counterplans in a single debate. They took pains to point out that they had consistently advocated multiple counterplans rather than limiting the negative to one counterplan. The quotations offered by Katsulas address that issue only and do not concern themselves with fiat at all. Finally, here, the theoretical arguments of "The Decision-maker" stand on their own merits and this issue is important only insofar as it helps us to understand how theorists have grappled with negative fiat since the inception of counterplans. It is of some interest that in the seminal paper introducing counterplans, the authors had fiat about right and that subsequent development of the idea has not been especially helpful.

Finally, I present a few arguments with regards to Perkins' preferred solution of limiting negative fiat to actions of the affirmative plan's actor. Perkins is disappointed with the solution offered because it does not give coaches and debaters a simple and complete solution to the problem of negative fiat, and Katsulas joins him in not savoring the prospect of theoretical argument about the appropriate decision-maker. Here the author sides with McGee's preference for theoretical debate by debaters: the "incompleteness" of the solution *is* a feature and not a bug. The force of the logic of decision-making extends only to conclude that the scope of negative fiat ranges over the authority of the appropriate decision-maker. The logic does not determine which decision-maker is appropriate for any given affirmative plan. That is an important conclusion about negative fiat that does not offer debaters a simple formulaic nostrum applicable to every counterplan. Debaters need to supplement this theory with arguments about which decision-maker is appropriate for a given plan and counterplan while critics need to evaluate those arguments before the legitimacy of a given counterplan is resolved. That is more pedagogically worthwhile than simple check-off items like "Is the counterplan by the affirmative actor?" or "Does the negative have a card about the counterplan?" or even "Is the counterplan actor a domestic public actor?" In any case, those who are pessimistic about the quality of theoretical argument about the decision-maker are encouraged to help establish community norms in favor of the resolutional agent or the affirmative actor as the appropriate decision-maker or to suggest an appropriate decision-maker along with the resolution.

Perkins offers an entertaining discussion of the alternative of limiting negative fiat to the affirmative actor: it is fun to read him debating himself on this issue. Initially, the logic of

decision-making only requires that counterplans are within the authority of the decision-maker choosing whether to adopt the affirmative plan. That logic does not require that only the alternatives available to the affirmative plan actor are legitimate. As pointed out, governance is typically hierarchical and the affirmative actor's decision-making is often subject to superiors' authority. Several examples have pointed this relationship out: the Army's decisions are conditioned on the authority of the Department of Defense, which in turn is subject to Executive authority, for example. We are not compelled to limit negative fiat to actions of the affirmative plan actor.

As Perkins points out, the best practical objection to limiting negative fiat to the affirmative plan actor is that the affirmative could choose an actor that excludes all attractive counterplans. The incentives to choose the Clean Air Office of the Environmental Protection Agency or the North African Affairs Desk of the State Department as the affirmative actor would be compelling if only counterplans with those actors were legitimate objects of negative fiat.

The affirmative might find a plan actor that has exclusive authority over the decision to enact the affirmative plan, and Perkins floats several examples of this possibility. However, it seems to me that Perkins does not really attempt to answer Perkins on this problem with the "affirmative actor" solution to the problem of negative fiat. Certainly this argument bears more reflection: concerns and ambiguities at this level of detail seem to me largely speculative. The potential for affirmative plan tailoring to exclude counterplans, however, is considerably greater for a theory which allows only affirmative actor counterplans than it is for a theory which encourages negative teams to argue for the appropriateness of a decision-maker with authority over both the plan and the counterplan. If the plan actor is an executive agency acting under specific statutory authority, for example, then an appropriate issue subject to debate might well be whether either the Congress or the President has the authority to decide if such action should be taken. The argument that neither Presidential authority over the executive agencies nor Congressional authority to amend statutes is sufficient to control the decision to enact the affirmative plan seems to me unpromising. In any case, the ground for potential counterplans is substantially more fertile if the negative is not constrained to only counterplans which the affirmative actor can enact. Finally, if the affirmative is correct that the affirmative plan actor is not subject to the authority of either the Executive or Legislative in respect to the decision whether to enact the affirmative plan,



then only counterplans which are within the authority of that agency are sensible reasons why the plan ought not to be done. How could it be otherwise?

In closing, a number of issues were raised that this response has not addressed. Most glaring of these is perhaps Katsulas' observation that "The Decision-maker" does not attempt to argue the advantages of this proffered solution to the problem of negative fiat. That was a conscious choice made in the spirit of Lichtman and Rohrer's development of counterplan theory. Pedagogical value is an elusive goal best served by theory that gets the logic right. Lichtman and Rohrer's argument on behalf of this approach to theory making still rings true for this author:

> Our only caveat is to note . . . that any purported paradigm follow the inherent logic of policy resolutions and avoid arbitrary strictures that reflect the idiosyncrasies of particular theorists. . . . [W]e stress the need for caution in skewing theory to accord with a given view of debate practice. Otherwise, the result would be a weakening of the intellectual rigor of academic debate. . . (145).

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