subsequently explores some of the costs and benefits of additional limits to the theory. Finally Korock responds to many of the major themes in these essays clarifying the position of the judge, not as the decision-making agent, but as the endorser of another's decision and argues that adherence to decision-making logic should be a primary concern in theorizing fiat. It is hoped that this discussion accurately represents the development of debate theory, not as a static presentation, but as an evolving conversation.

THE DECISION-MAKER

Michael M. Korcok

"Who decides?" matters. One manner in which the outcome of a decision depends upon the decision-maker is that decision-makers differ in their motives, interests, and values. A second manner in which decisions depend on the decision-maker is the quality of decision-making styles and processes. But "Who decides?" matters in another way: the outcome of a decision depends on the decision-maker's scope of authority over competing alternative courses of action. Understanding this last manner in which "Who decides?" matters dissolves the now long-standing problem in academic debate about the appropriate scope of negative fiat. This essay 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.

Let us suppose that we are evaluating whether the debate team of Smart and Feisty should participate in the Academy tournament next month. Let us initially posit that the debaters are making the decision about whether to participate. This decision ought to be made by weighing the value of participating in the tournament against the best competitive alternative course of action that could be chosen by Smart and Feisty. Let us assume that the best alternative is attendance at a campus social function. Smart and Feisty might well decide that participating at a debate tournament would offer more value than yet another beer-fest. Our deliberation whether to endorse the debaters' choice could bring to bear a rather different set of values, interests, and concerns. The intellectual evaluation of others' choices is, furthermore, not a simple, passive, nor inconsequential exercise. For this example, however, let us suppose that we neither disagree with the decision-makers' valuations of their options nor that we problematize our role as evaluators and intellectual endorsers. After examining their decision, let us endorse the choice to participate at the Academy tournament.

Now, however, let us posit that Wise, the Director of Forensics, is making the decision about whether Smart and Feisty should participate in the Academy tournament. Director Wise ought to make this decision by comparing the value of the debaters' participation

Michael M. Korcok (M.A., McNeese State University) is a Doctoral candidate at Florida State University.

against the best competitive alternative course of action that could be chosen by Wise. Let us assume that best alternative available to Director Wise is entering the debaters in the Collegium tournament instead. In this situation, Wise might well decide that the debaters should not participate at the Academy because she prefers the Collegium tournament. In auditing this choice, let us suppose that we neither disagree with Director Wise's valuation of her options nor that we problematize our role as evaluators: let us endorse the choice not to participate at the Academy tournament.

Whether Smart and Feisty should participate in the Academy tournament next month hinges upon who faces that decision even though there may be no difference between the decision-makers in respect to motives, interests, values, or decision-making styles and processes. Furthermore, the outcome of our evaluation of whether the debaters should attend the Academy tournament hinges upon "Who decides?" without involving any differences in our role as evaluators. The different outcomes are simply the result of decision-makers' differing scopes of authority to choose alternatives.

Finally, before leaving this introductory example, let us ask whether Smart and Feisty should participate in the Academy tournament without specifying a decision-maker faced with making this choice. We might, perhaps, attempt to take the perspective of an ideal, rational decision-maker. There is no satisfying way to proceed. If we are committed to endorsing participation if and only if the value of participation is greater than the value of the best competitive alternative to participation, then we are left with a simple quandary: Which of the universe of possible alternatives are legitimate reasons to reject participation? If University funding were to be quadrupled by the Regents next week, a decision we would surely applaud, then Smart and Feisty could be sent to a colloquium in Paris instead. If the Dean were to select Feisty as the scholar of the year, then the debaters ought to stay home for the presentation ceremony. If the Academy decided to offer another tournament later in the year, attending the subsequent tournament instead could be a reason not to participate next month. And of course we could add to this list of possible competing alternative courses of action *ad infinitum*. Our quandary is that there is no scope of authority over alternative courses of action that adheres to ideal rational decision-makers: they can imagine a horde of possible competitive alternatives and they have authority over none of them. This quandary is exactly the problem of the appropriate scope of negative fiat in contemporary debate.

Initially, this essay reviews the modern history of the problem of the appropriate scope of negative fiat, then proffers a solution within an "opportunity cost" grounding of counterplans, and finally, examines the role of the debate critic as an evaluator of decisions.

Footnote Thirteen

Allan Lichtman and Daniel Rohrer, in their 1975 classic "A General Theory of the Counterplan," observed in footnote thirteen, their only consideration of negative fiat, that:

> It is assumed, of course, that decisionmakers being addressed have the power to put a counterplan into effect. An individual or governmental unit can reasonably be asked to reject a particular policy if an alternative promises greater net benefits. If, however, a counterplan must be adopted by another individual or unit of government, the initial decision-maker must consider the probability that the counterplan will be accepted. Debate propositions often affirm that a particular policy should be adopted by the federal government. Even if adoption of this policy by the individual state governments would be more beneficial, a reasonable critic would still affirm the resolution if state adoption were highly unlikely. The federal government should refrain from acting only when the net benefits of state and local action, discounted by the probability that such action will occur, are greater than the net benefits of federal action (74).

The general solution to the problem of the appropriate scope of negative fiat hinted at but not elaborated upon by Lichtman and Rohrer, it is fair to say, has been ignored by academic debate during the intervening two and a half decades. Lichtman and Rohrer limit the scope of negative fiat to all and only those actions that the "decisionmakers being addressed" can put into effect. Negative fiat does not extend to competitive alternatives outside of the scope of authority of the appropriate decision-maker: these alternatives are subjected to calculations of propensity and probability of adoption; they are mere consequences of action rather than alternatives which could be chosen, and they are no different in kind than disadvantages. There are at least three very different ways to read this footnote. The first involves a conflation of debate critics and decision-makers, the second was incorporated into Walter Ulrich's resolution of negative fiat, and the third is substantially the position taken in this essay.

Conflating Critics and Decision-makers. According to one reading of the footnote, the "decisionmakers being addressed" in an academic debate are debate critics: they are, after all, deciding whether the affirmative plan should be adopted. This reading is problematic for at least two related reasons: the first is that debate judges typically have no authority to put either the affirmative plan or any interesting counterplan into effect, and the second is that conflating debate judges and decision-makers creates the problem of an appropriate scope of negative fiat. The first difficulty is that typical debate critics have neither the authority nor the power to put either plans or counterplans into effect; that authority typically resides in legislatures, executives, corporations, movements, and other loci of power and does not reside in graduate students and academics. We could, for the purposes of debate, pretend that debate critics do have the authority to put the plan into effect and we could also extend our imaginations to give debate critics the authority to enact counterplans. A second difficulty would immediately arise: Which counterplans should we pretend that debate critics have the authority to enact? This is the problem of the appropriate scope of negative fiat, and our inability to answer this quandary in a satisfying manner argues against a reading that conflates decision-makers and debate critics.

This initial reading of footnote thirteen is also tortured. Lichtman and Rohrer clearly and appropriately assume that the "decisionmakers being addressed" are "individual and governmental units" with the "power to put a counterplan into effect" (74). That does not describe debate judges. They furthermore argue that negative fiat cannot legitimately extend to counterplans which must be adopted by "another individual or unit of government" (74). That characterization makes no sense if debate critics and decision-makers are equivocated. Lichtman and Rohrer clearly do not conflate decision-makers and debate critics.

It may seem curious that this misreading has persisted at all. It is clearly a tortured reading of the Lichtman and Rohrer view and it immediately gives rise to the problem of the appropriate scope of negative fiat. Traditional debate theory equivocated debate critics and decision-makers without difficulty. Deciding whether the affirmative plan is better than the *status quo* does not give rise to problems of negative fiat precisely because there is only one alternative to the affirmative plan, the expected course of action if the affirmative plan is rejected. From the traditional debate theory perspective, neither debate critics nor decision-makers need to decide which of the universe of possible competing alternatives to the affirmative plan are legitimate. Since the debate critic and the policy-maker faced exactly the same decision in traditional debate theory, it was a simple matter to understand the

debate judge as a policy-maker. The traditional conflation of debate critics and decision-makers has persisted despite its obvious incompatibility with Lichtman and Rohrer's reformulation of counterplan theory and has, in no small measure, served to prevent solution of the problem of the appropriate scope of negative fiat.

The Ulrich Reading. Walter Ulrich, one of the few to mention Lichtman and Rohrer in the context of discussions regarding negative fiat, read Lichtman and Rohrer faithfully, arguing that negative fiat should extend to all and only actions of the resolutional agent. In his 1979 essay "The Agent in Argument," Ulrich read Lichtman and Rohrer thus:

> I would argue that the judge should adopt the role of the agent specified in the resolution. The debaters should argue as they would if they were arguing before the agent in the resolution. Thus, if the resolution calls for Congressional action, the policymaker should be viewed as Congress. If the topic calls for international action, the policymaker should be one controlling an international organization. The resolution thus serves the function of designating the agent that is being addressed (11).

Ulrich's reading of footnote thirteen was too narrow: Although Lichtman and Rohrer assumed that the appropriate decision-maker was the resolutional agent, the more important insight of footnote thirteen was that negative fiat legitimately extends only to actions within the authority of the appropriate decision-maker. Ulrich justifies some limitation of negative fiat and makes a plea for the educational value of teaching debaters personal limitation and responsibility, but assumes that the affirmative plan actor is the resolutional agent. There was no reasoning connecting fiat limitation, the affirmative actor, and the resolutional agent. No serious consideration of other potential decision-makers, such as the resolutional agent, the affirmative plan actor, or even an ideal rational citizen was present. Ulrich simply did not reach the central insight of footnote thirteen.

In his 1981 essay "The Judge as an Agent of Action: Limitations on Fiat Power," Ulrich developed his solution to the problem of the appropriate scope of negative fiat. Ulrich's solution had two components: the debate critic should role-play as the appropriate decision-maker and the appropriate decision-maker is the resolutional agent. Ulrich argued on behalf of this "role-playing the resolutional agent" solution:

> One possible solution to the problem of fiat power is to alter the current view of the role of the judge in a debate. Rather than having the judge adopt the plan/negative policy through the use of fiat power, the judge should play the role of the agent

> specified in the resolution. As a result of this perspective, the judge would not fiat any policy into existence, but would rather decide whether or not, based on the arguments in the round, the agent in the resolution would take the action recommended by the affirmative team. Thus, if the resolution called for the federal government to take some action, the judge would evaluate the arguments in the round based on the way that a federal policy maker would respond to the arguments. This view of the role of the judge would have several desirable implications that would help resolve many of the problems that are created by the use of fiat (2).

The first component of Ulrich's solution, that for the purposes of the debate the critic role-plays as the appropriate decision-maker, may appear curious at first glance. Debate judges are not, after all, ASEAN or the United States Federal Government, or Congress – they are themselves. Ulrich took this position with a view to reforming previous practice. As mentioned above, the conflation of debate critics with decision-makers is an artifact of traditional problem-solution debate theory. Prior to the modern theory of counterplans, it was sufficient to view the debate critic as the policy-maker deciding whether to enact the affirmative plan: the debate critic was thought to exercise "fiat power," an ability to bring the affirmative plan into being. This view is problematic because the debate critic typically has no actual authority to enact either the affirmative plan or any interesting negative counterplans. More importantly, the lack of a defined scope of authority over possible alternative courses of action creates the problem of the appropriate scope of negative fiat. By recasting debate critics as role-playing appropriate decision-makers, Ulrich attached to debate critics a scope of authority over possible alternatives and disposed of the fiction that debate judges actually bring policies into existence by "exercising fiat power."

The second component of Ulrich's solution, that the appropriate decision-maker is the resolutional agent, was suggested in Lichtman and Rohrer's classic reformulation of counterplan theory. The appropriate scope of negative fiat becomes a non-issue for this view precisely because the judge is given a specific scope of authority over possible alternative courses of action. The appropriate scope of negative fiat is the scope of the resolutional agent's authority over competitive alternatives. Stated differently, considerations of propensity are irrelevant for all and only those actions that the resolutional agent can undertake. He illustrated how his view of judge role-playing as resolutional agent solved the problem of negative fiat:

> The first implication of viewing the judge as the agent specified in the resolution is that the options available to both teams would be limited. If the judge is a federal policymaker, for example, the only options open to him/her are options to enact potential federal programs. This would mean that a negative team arguing for a state counterplan would have to prove that the counterplan will be adopted, since the action that is being advocated falls outside the jurisdiction of the judge. Inherency arguments would be limited to those programs that the federal government COULD adopt, or those programs that other levels of government ARE adopting ("Judge" 2).

Both components of Ulrich's solution are problematic. That debate judges pretend to be something that they are not and could not be is an artifice, one that must strike even the casual observer as an *ad hoc* gimmick. This artifice has been persistently troubling to debate theorists who have argued on behalf of more parsimonious views of the role of the debate critic. Dallas Perkins, in his 1989 essay, "Counterplans and Paradigms" argued on behalf of an "intellectual endorsement" or "policy evaluation" view:

> Thus the outline of a possible "debate paradigm" begins to emerge: the judge is to act as if she were called upon to witness an argument and endorse the position of one side or the other, but not to take any further action. Several things about this new paradigm make it attractive. First, it is what resolutions are all about. These are not designed to promote policy making, but rather policy evaluation. They are more often than not, as in our case, adopted by private groups, though they may deal with matters of public policy. The adoption of a resolution constitutes an endorsement, not implementation. Since the judge is not in fact a policy maker, it is appropriate that resolutions are not typically a tool of policy making (148).

The rejection of role-playing as an artifice in favor of an intellectual endorsement or policy evaluation view substantially undermined the Ulrich solution. If the debate critic is just the debate critic, then why should they be limited to considering only policies from the perspective of the decision-maker they are role-playing? The objection to judicial role-playing in general was furthermore related to concerns about the particular agents which debate judges might be asked to role-play. This concern is simply stated: "Why should the debate critic be limited to taking only the perspective of the resolutional agent or any other particular decision-maker?" Roger Solt connected the general objection to role-playing with a rejection of limitations upon negative fiat which would constrict discourse to "official" policy in his 1989 essay, "Resolving the Ambiguities of Should:"

> I believe that the judge should not assume any particular role, be it member of Congress or social scientist, in evaluating the debate. Rather, the judge should reflect the perspective of an ideally impartial, informed, and eclectic viewpoint. Most consistent with this view of the judge seems to be a view of fiat simply as an act of intellectual endorsement. If intellectual endorsement is all that occurs at the end of the debate, there is no real reason why the judge should be precluded from endorsing options outside the political mainstream – if they are competitive with the affirmative (130).

Because Ulrich had interwoven the two components of his solution to the problem of the appropriate scope of negative fiat, these compelling objections to the artifice of judicial role-playing served as well to undermine the argument that the appropriate decision-maker is the resolutional agent. This may seem curious at first, but if the debate critic is just the debate critic rather than the resolutional agent or any other particular decision-maker, it seems only natural to ask: "Why should the debate critic label some competitive alternative courses of action as illegitimate, as inappropriate to the decision to lend or withhold an intellectual endorsement of the affirmative plan?" And to this question, Ulrich had no compelling answer.

The second component of Ulrich's solution, that the appropriate decision-maker is the resolutional agent, is also problematic. Simply put, there appears no connective logic in Ulrich's essay which argues that the appropriate decision-maker ought to be the resolutional agent rather than some other governmental decision-maker, the affirmative plan's actor, a non-governmental organization, or even an ideal impartial evaluator. Solt explained this sort of objection:

> Ulrich's standard, however, posits a very narrow policy-making view of the debate process. It assumes that the judge actually adopts the role of a federal decision maker, or whatever the topical agent may be. I have already indicted the idea that the judge should assume such a critical perspective. Many who consider questions of public policy are not actual decision makers, and for such non-decision makers, a question such as the comparative desirability of state versus federal action (which Ulrich's approach would exclude) might well arise (132).

This objection had force primarily because Ulrich offered no reasons for the resolutional agent as decision-maker; he presented arguments for limiting negative fiat and then

demonstrated that his solution did so elegantly. Ulrich's strategy left his solution largely defenseless against objections which simply asked "But why the resolutional agent?"

This second component of Walter Ulrich's solution, that the appropriate decision-maker is the resolutional agent, is a special case of the solution presented in this essay. Ulrich's arguments, however, do not justify the special case. The argument presented by Ulrich that went furthest in warranting the limitation of negative fiat by way of specifying a particular decision-maker merely entailed that the affirmative and negative ought to be limited to the same decision-maker:

> Humans are choice making animals, who are forced to accept their limitations and to act upon those limitations. Consider the types of arguments and decisions our students face. In deciding what graduate school to go to, the issue is not, in the best of all possible worlds, where should the student go. This approach would enable students to argue that Harvard or Yale should accept them. Instead, the student is forced to accept the actions of others as a given, and he/she is forced to decide among those options open to him/her and only those options open to him/her. While there are examples of people who sit back and try to decide who is the ideal agent to perform a task, at the point that any action is converted into reality, only one agent is involved. To allow discussion of what other agents should do would allow an individual to live in a fantasy world, ignoring his/her own obligation to act in the hopes that another person beyond their control will act. While both types of argument exist in the real world, the most relevant type of argument is the argument that takes place when an individual recognizes the limits of being human and attempts to decide, not what would be the best of all possible worlds, but what option available to him/her is the most productive option ("Judge" 5).

Taken together, the objections to Ulrich's solution were compelling: judicial role-playing is an inelegant artifice; constraining debate to mainstream political discourse is unwarranted; and tying judicial perspective to a particular viewpoint appears to be logically arbitrary. Entwining the two components of Ulrich's solution, judicial role-playing and resolutional agent as appropriate decision-maker, was a fatal mistake as theorists developed a compelling case against judicial role-playing. Most importantly, Ulrich's exposition, by focussing on the advantages and disadvantages of judicial role-playing of the resolutional agent, failed to reach what this author takes to be the important insight which dissolves the

problem of the appropriate scope of negative fiat: the scope of negative fiat is constituted by the scope of authority of the decision-maker.

Unfortunately, the success of these objections has led to the rise of a theoretical perspective which can fairly be described as "fiat *ala carte*." The contemporary view seems to be that fiat ought to be granted to or withheld from those counterplans which meet or fail to meet a standard or standards selected from a theoretical smorgasbord. Rarely are the selected standards connected to the logic of counterplans or grounded in a theory of counterplans. A decade after Solt commented upon the unresolved problem of the appropriate scope of negative fiat, his words still ring true:

> There is clearly, however, no such consensus where negative fiat is concerned. With the rise to prominence of the counterplan as a negative strategy, it is negative rather than affirmative fiat which is increasingly contentious. While affirmative fiat is a necessary consequence of the resolution's wording, negative fiat is definitely more problematic. If affirmative fiat involves imagining that the affirmative plan were adopted, negative fiat is the act of imagining alternatives to the affirmative. While the resolution usually places some constraints relating to realism on the affirmative, the non-resolution places no such constraints on the negative. Consequently, the potential (and actual) abuses of negative fiat could fill a forensic wax museum (122).

The basic problem with the contemporary approach to the appropriate scope of negative fiat is that it fails to understand the fundamental insight pointed to by Lichtman and Rohrer in footnote thirteen: "It is assumed, of course, that decisionmakers being addressed have the power to put a counterplan into effect" (74).

Re-reading Footnote Thirteen

The preferred reading of footnote thirteen is substantially the position defended in this essay: negative fiat legitimately extends to all and only those competitive alternatives within the scope of authority of the appropriate decision-maker. Our introductory example illustrated the logic underlying this reading: decisions should be made by comparing the value of the choice under consideration against the worth of the best competing alternative choice, different decision-makers possess different scopes of authority over alternative choices, and evaluating a decision without specifying the decision-maker is incoherent. The example presented in footnote thirteen illustrates how this view operates to dissolve the

problem of negative fiat in academic debate. If the appropriate decision-maker faced with choosing whether to adopt the affirmative plan is taken to be the federal government, then alternative courses of action, such as state and local initiatives which the federal government does not have the authority to enact, are subject to calculations of propensity. All and only those actions which the federal government has the authority to enact are immune to calculations of propensity – they are promoted from being mere consequences and elevated to the rank of possible counterplans. Even though "A General Theory of the Counterplan" is widely credited with initiating the contemporary theory of counterplans, the fundamental insight contained in footnote thirteen was generally ignored and the problem of the appropriate scope of negative fiat has been intractable.

The solution to the problem of negative fiat is not that the judge ought to role-play the resolutional agent, but rather that *the appropriate scope of negative fiat is the scope of the authority of the decision-maker choosing whether to adopt the affirmative plan.* This section proceeds by first addressing the most important pragmatic implication of this solution, after that, offering an extended example of how this solution functions, and finally, grounding the solution in decision-making processes.

Determining the Decision-maker. This solution is incomplete in the sense that it does not particularize the scope of negative fiat for all debates: it does not imply that the scope of negative fiat is constituted by the scope of authority of the federal government, the affirmative plan's actor, the resolutional agent, nor any other particular decision-maker. The logical force of the arguments presented below extends only to this solution and does not go so far as to particularize the appropriate decision-maker. Likewise, adequate grounding in considerations of decision-making processes extends this far and no farther.

The incompleteness of the solution presented here is a feature, not a bug. If we come to understand that the appropriate scope of negative fiat is constituted by the scope of the authority of the decision-maker choosing whether to adopt the affirmative plan, then the problem of the appropriate scope of negative fiat is dissolved. What is left is a question: "In any given debate, who or what is the appropriate decision-maker?" This question can be addressed in at least three ways: by arguing over the appropriate decision-maker in the debate itself; by creating a community consensus that the resolutional agent is the appropriate decision-maker; or by selecting the decision-maker contemporaneously with the resolution. The first option leaves to debaters the task of explaining how any given counterplan fits within the authority of the decision-maker choosing to adopt the affirmative

plan. Debate about who ought to be the appropriate decision-maker for the particular affirmative plan at issue might well ensue, since that determination would fix the scope of legitimately fiated counterplans. Many of the extant arguments for limiting negative fiat to domestic public actors, expanding negative fiat to include international bodies, checking negative fiat through the relevant resolutional literature, or attempting to locate the site of controversy could be marshaled in defense of one or another particular decision-maker.

The second option extends the role of the resolutional agent. The agent in the resolution currently serves as a parameter which delimits the affirmative's choice of plan actor. A second role the resolutional agent can play is as the decision-maker choosing whether to adopt the affirmative plan. This option ought to function because, in most instances, governance is hierarchical. If the federal government is the resolutional agent, for example, then actors within the federal government (potential affirmative plan actors) are also within the scope of its authority (as are other potential counterplan actors). This option is not logically implicated by the solution presented in this essay and requires an agreement by at least the affirmative and negative debaters that the resolutional agent ought to serve as the decision-maker. Absent a community consensus that the resolutional agent ought to serve as the appropriate decision-maker, this option reduces to the first: the debaters themselves would be faced with the task of justifying their particular choice of decision-maker.

The third option, selecting the appropriate decision-maker contemporaneously with the resolution, may seem radical at first glance. How compelling this option is ultimately depends upon how pessimistic one might be with regard to the quality of arguments debaters might muster about the appropriateness of given decision-makers. It is a reformulation of an idea first proposed by Solt when he suggested that a satisfying resolution of the problem of the appropriate scope of negative fiat may never be found and that the community might need to select the range of acceptable counterplans along with the resolution:

> A second approach would be to write a kind of negative resolution. The resolution could contain two sentences, one indicating the scope of affirmative choices, the other the scope of negative choices. Such a negative resolution might state that policy alternatives germane to this resolution are those which operate within present government structures and which could be adopted by domestic public actors (138-139).

Solt proposed the artful delimitation of the list of acceptable counterplans. In this form, his solution is unacceptable for at least two reasons: it unduly intrudes upon substantive issues more appropriately resolved by the debaters themselves and it offers no connecting logic between the delimitation of acceptable counterplans and the evaluation of the affirmative plan. The natural question to ask is: "Why these counterplans and not others?" So long as there was no satisfying solution to the problem of the appropriate scope of negative fiat, the only answer available was: "Because we have to limit negative fiat somehow. Do you have a better idea?" The solution proffered in this essay allows us to reformulate Solt's proposal. Because the appropriate scope of negative fiat is the scope of the authority of the decision-maker choosing whether to adopt the affirmative plan, we need only select an appropriate decision-maker. The problem of the appropriate scope of negative fiat is unresolvable without specifying a decision-maker and, conversely, specifying a decision-maker resolves the ambiguities of fiat. The natural question to ask becomes: "Why this decision-maker?" The answer to this question is: "Because we cannot decide whether any affirmative plans should be chosen unless we specify the decision-maker faced with making that decision." We do not wish to intrude on substantive questions about the desirability of the affirmative plan, nor can we anticipate potential alternatives to affirmative plans, but those questions are incoherent without a decision-maker. Lastly, we believe that arguing about the identity of the appropriate decision-maker is not as valuable as the other issues which will face debaters on this resolution."

An Extended Example. An extended example serves to illustrate the application of this essay's solution to the problem of the appropriate scope of negative fiat. Let us posit the following:

Resolution: the U. S. Department of Defense should increase its security assistance to Southeast Asia.

Affirmative plan: the U. S. Army gives Laos forty-seven Blackhawk helicopters.

Now, let us begin by considering several potential decision-makers that might have authority to decide whether to adopt the affirmative plan:

Decision-maker 1: The United States Federal Government.

Decision-maker 2: The United States Department of Defense (the resolutional agent).

Decision-maker 3: The U.S. Army (the affirmative actor).

Initially, the decision whether to adopt the affirmative plan may well hinge upon the identity of the decision-maker. In particular, each of the three candidate decision-makers has a different scope of authority over possible competitive alternative actions. There are options available to the Department of Defense, for example, which are unavailable to the Army.

Furthermore, if we fail to select a particular decision-maker faced with the decision to adopt the affirmative plan, we will be unable to proceed: the affirmative plan should be adopted if and only if it is preferable to the best competitive alternative, and the nature of that alternative is necessarily dependent on the decision-maker. Finally, by way of introduction, the appropriate scope of negative fiat is unresolvable unless we specify the decision-maker. How nice it would be if those who threaten Laos decided to surrender, if ASEAN funded assistance to Laos themselves, or if global harmony ruled the day. These possibilities, however, are satisfyingly rejected as unreasonable if and only if we are able to select a decision-maker that would not have these alternatives as choices.

Now, let us examine several possible counterplans and assess whether fiat legitimately extends to them under the assumption that the appropriate scope of negative fiat is all and only those actions for which the appropriate decision-maker has authority.

Counterplan 1: Missouri sends state troopers to Laos. This counterplan is illegitimate even if it competes with the plan because none of the candidate decision-makers would have the authority to choose it. Now, it might be the case that there are reasons to believe that Missouri has some non-zero propensity to send their troopers to Laos absent the plan that would decrease if the plan were enacted. In this case, we might have a disadvantage, but not a counterplan: fiat would be neither necessary nor appropriate.

Counterplan 2: France sends Mirages to Laos. This counterplan, even if it competes with the affirmative plan, is illegitimate because none of the candidate decision-makers has the authority to choose French actions. Whether the Army should send Blackhawks to Laos would and should include considerations of the consequences of that act with respect to French reaction: but that is a matter of assessing advantages and disadvantages and not an appropriate object of fiat. Similarly, that US pressure might convince France to send Mirages to Laos is a far cry from an extension of fiat that waives considerations of the likely success of such pressure.

Counterplan 3: The CIA sends operatives after enemies of Laos. This counterplan's legitimacy is a more complex issue. Presumably, if the United States Federal Government were successfully defended as the appropriate decision-maker, then this counterplan would be legitimate. If, however, the appropriate decision-maker is the Department of Defense or the U. S. Army, neither of which has authority over the actions of the CIA, then this counterplan would not be legitimate. A negative team advancing this counterplan would be faced with justifying the federal government as the appropriate decision-maker rather than

the Department of Defense (the resolutional agent) or the US Army (the affirmative plan's actor).

Grounding Negative Fiat. The problem of the appropriate scope of negative fiat has been notoriously resistant to solution. In part, the problem's intractability has been a consequence of the method used to address it: previous theorists have either sought after a standard or standards that limited negative fiat fairly or they looked to attack or advocate particular types of counterplans. This approach to debate theory is problematic because it fails to examine the logical underpinnings of negative fiat. It is not enough to present a solution, offer a few motivating comments, and illustrate its applications. The solution presented in this essay is entailed by an adequate grounding of the concept of negative fiat in decision-making. Given the perspectives and arguments presented thus far, we are now ready to ground negative fiat.

The problem of negative fiat has two aspects that are in tension. On the one hand, it appears that all competitive counterplans are reasons to reject the affirmative plan, thus it may be asked: "Why and how does one decide that some of those reasons should be disallowed?" On the other hand, it appears that any use of negative fiat circumvents calculations of the propensity of counterplan action absent implementation of the plan, and it may be asked: "Why and how does one decide that negative fiat should extend to any counterplan actions?" One way to address both of the above concerns is to ask: "Under what circumstances is it appropriate to eliminate considerations of the propensity of actions which trade-off with the affirmative plan?"

The suggested solution addresses both aspects of the problem of the appropriate scope of negative fiat and is contiguous with our intuitions about legitimate negative fiat. I first introduce the concept of opportunity cost, then examine why fiat does not extend to some competitive counterplans, and finally, explain why it is legitimate to ignore considerations of propensity for some counterplans.

Beginning with Opportunity Cost. Human beings and human agencies confront every decision in a context of constraint. One choice necessarily forecloses other choices, either because of the mutual exclusivity or the mutual undesirability of some paths. Few choices, thankfully, foreclose all other options, but no decisions, because they are decisions, can be made without selecting one choice at the expense of others.

The problem of valuation begins as a simple question: "How much is a given choice worth?" A presumably simple and commonplace answer is available: the value of a given

choice is the anticipated difference between its benefits, the good which is expected to ensue, and its costs, the bad which is expected to ensue. This answer to the problem of valuation is insufficient for decision-making, however. That a particular choice has positive value or, absurdly, seven hundred and three utils, tells us very little about whether it should be selected: there are always other, sometimes competing, choices we could make. If choices were like multiple-choice tests, a delimited menu of alternatives, one and only one of which could be selected, then there might yet be a way to proceed: we would select the highest-valued alternative. But only rarely are decisions so simple. We must typically decide whether to take a given course of action, knowing that many alternative choices with complex possibilities for combination and permutation are barely specified but possible.

For decision-making purposes, a seemingly simple but ultimately subtle answer to the problem of valuation is available: the value of a choice is the difference between its worth and the worth of the best alternative that must be foregone. The worth of the best alternative that must be foregone is called a choice's *opportunity cost.* James Buchanan, the 1986 Nobel Prize recipient in economics, defined the concept of "opportunity cost" in his *The New Palgrave* exposition:

> 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. Opportunity cost, the value placed on the rejected option by the chooser, is the obstacle to choice; it is that which must be considered, evaluated, and ultimately rejected before the preferred option is chosen (720).

Once the concept of opportunity cost is in hand, the above solution to the problem of valuation leads to a simple decision-rule: affirm a choice if and only if it is better than its opportunity cost.

In academic debate, the concept of opportunity cost is instantiated in competitive counterplans. The negative team presents counterplans as opportunities that would be sacrificed if the affirmative plan were to be adopted. Counterplan competition with the affirmative plan is just the idea that adoption of the plan would foreclose the opportunity of enacting the counterplan. The decision-rule applied is that the affirmative plan should be adopted if and only if it is better than the competitive counterplan.

Fiat does not extend to competitive counterplans that are not opportunity costs. The first aspect of the problem of the legitimate scope of negative fiat can be summarized in the question: "Why and how does one decide that some competitive counterplans should be disallowed?" If the affirmative plan is undertaken, then competitive counterplan action cannot or should not be taken: we must choose between the plan and the counterplan. It appears that all competitive counterplans are thus opportunity costs of plan action. From this perspective, any and all competitive counterplans can be legitimately fiated. A counterplan theory grounded in decision-making, however, does not sanction all competitive counterplans: only some competitive counterplans represent legitimate opportunity costs of plan action.

A counterplan represents a potential opportunity cost of taking plan action only if the counterplan competes with the plan and the decision-maker choosing whether to undertake plan action has the ability to do so. Opportunity costs are necessarily situated within choice-making contexts. It is not any alternative action which must be foregone if a posited action is undertaken which could be an opportunity cost, only those actions foregone which are open to choice in a given decision-making context are potential opportunity costs. Actions that you cannot undertake, for example, can never present opportunity costs for you: they are not alternatives open to choice. Similarly, the independent actions of others cannot present opportunity costs for you: you cannot choose these alternatives, only others can.

Thus, not all competitive counterplans represent relevant objections to an affirmative plan. Only those competitive counterplans that the decision-maker deciding whether to undertake plan action has the authority to choose are relevant objections to plan action.

Fiat extends to competitive counterplans that are opportunity costs. The second aspect of the problem of the legitimate scope of negative fiat can be summarized in the question: "Why and how does one decide that fiat legitimately extends to any counterplans?" Counterplans have no propensity: the action specified by a counterplan will not occur. Evidence is not presented for the likelihood of counterplan action in the absence of plan action and the probability that such action would be undertaken in the absence of plan action is not an issue for counterplans. A counterplan operates to reject affirmative plan action because taking plan action would prevent counterplan action that wouldn't occur anyway. It appears that counterplans are not really costs of plan action after all. On this view, the negative properly gets no fiat. Why should the propensity of actions which plan action would sacrifice ever be ignored?

The correct answer to this question is: "Because opportunity costs are not subject to calculations of likelihood or propensity – they are coequal alternatives for a decision-maker choosing whether to take plan action." The worth of any choice is its value in comparison to its opportunity cost: the value of the best choice that must be foregone but could be chosen otherwise. Opportunity costs are necessarily situated within choice-making contexts. A decision-maker's own calculation of the likelihood, propensity or probability of choosing one or another alternative is literally nonsensical. Decision-makers would be in the bizarre position of attempting to predict what they would do if they chose differently. Opportunity costs nullify calculations of propensity and likelihood.

Thus, at least some competitive counterplans represent relevant objections to an affirmative plan. Those competitive counterplans that the decision-maker choosing whether to undertake plan action has the authority to choose are relevant objections to plan action without calculation of propensity.

The Judge

In academic debate, the intractability of the problem of the appropriate scope of negative fiat is, in part, the result of conflating debate critics with decision-makers. The solution to the problem of the appropriate scope of negative fiat offered in this essay neither equivocates between debate critics and decision-makers nor asks debate critics to role-play decision-makers. For decision-makers, the appropriate scope of negative fiat is the scope of their own authority over alternative choices. For debate critics, the appropriate scope of negative fiat has nothing to do with the critic's own authority but, rather, remains the scope of authority of the decision-maker. An immediate entailment of this view is that debate judges can and should remain themselves: critics, evaluators, pundits, and endorsers rather than decision-makers.

The problem of the appropriate scope of negative fiat is no different in debate than in other contexts. Advisors, consultants, pundits, evaluators, endorsers, and critics must understand the set of competing alternatives available to the relevant decision-maker because an action ought to be taken if and only if it is the best of the competing alternatives available to the appropriate decision-maker. This view separates critics from decision-makers in an appropriate manner. Unlike solutions which conflate critics with decision-makers or that ask critics to role-play decision-makers, there is no suggestion in this perspective that critics ought to accept *uncritically* the motives, interests, and values of the decision-maker whose

choices they audit. Understanding that negative fiat is constituted by the authority of the decision-maker does not imply that critics ought to endorse the decision-maker, the decision-maker's decision processes, or the decision-maker's valuation of the choices facing them.

This view does not relegate critics to a simple, passive, or inconsequential role: rather, a discursive space for critical arguments is framed by the separation of critic and decision-maker. The act of endorsement is distinct from the act of policy decision-making. A debate critic is asked by the debaters to lend or withhold intellectual endorsement for the affirmative plan. It is, of course, assumed that a critic's intellectual endorsement ought to depend, in some manner, upon whether the affirmative plan ought to be chosen by the decision-maker. Intellectual endorsement is a distinct choice faced by critics, however, which potentially involves additional considerations that do not speak to a decision-maker's deliberations.

It is now a commonplace for debaters to present critical arguments that directly address the debate judge's act of endorsement. These arguments often include the observation that "fiat is illusory," that is, no real policy change will occur as a result of the debate. This observation, while true, misses the mark. The debate critic's act of endorsement does not bring a policy into being any more than does endorsement by any other critic, advisor, or auditor. This does not argue, by itself, that endorsement ought not to depend upon the desirability of the affirmative plan. Nor does it somehow disable the reasons for an endorsement of the affirmative plan. This argument is meant to create the space for arguments that directly address the act of endorsement. By reminding critics that they are critics only, reasons to withhold an endorsement that do not speak to the decision-maker's options are enabled.

There is also an emerging trend in academic debate to "permute" critical arguments, even though critical arguments are not typically offered as competitive alternatives to the affirmative plan. This argumentative move is intuitively appealing. The act of intellectual endorsement is, in one important sense, no different from any other human action. It ought to be undertaken if and only if it is better than the best competitive alternative. Critical arguments, if they are to be relevant, must also function as reasons for the judge to take some action that competes with an endorsement of the affirmative plan. A "permutation" of the criticism is little more than a test of whether the criticism offers a reason not to endorse the affirmative plan.

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.

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Locating Negative Fiat: A Response to Korcok

John P. Katsulas

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

John P. Katsulas (M.A., University of Iowa) is the Director of Debate at Boston College.