

The Final Round Decisions

Adjudicators

Mike Bartanen, Pacific Lutheran University, voted Government
Marty Birkholt, Creighton University, voted Government
Konrad Hack, Point Loma Nazarene University, voted Government
Edward S. Inch, Pacific Lutheran University, voted Opposition
Al Johnson, Colorado College, voted Opposition
Sharon Porter, Northern Arizona University, voted Government
Bonnie Stapleton, Colorado College, voted Opposition
Robert Trapp, Willamette University, voted Government
Dan West, Rice University, voted Government

Decisions

Mike Bartanen, Pacific Lutheran University

I think Government's case meets the topicality issue. They suggest two negative consequences in the Prime Minister's constructive. I am not comfortable with defending exactly how far the Government has to go to weigh the negative consequences versus the benefits of the plan. Thus, if topicality is out (and by the way, Government, I for one would vote on topicality if the Opposition won it) it becomes a comparison of plan and counterplan.

1. I am really torn on the counterplan. The Prime Minister's rebuttal has an absolutely devastating answer on jurisdiction of EPDA, preventing the case from being heard. But my dilemma is, that argument seems to be completely new in the Prime Minister's rebuttal. I flowed five responses in the Member of Government's constructive, none of which was that particular argument. (Of course, if that answer was made, I will be the biggest horse's ass in the history of the world!) But I do not see it. I think that the Prime Minister's rebuttal must have reasonable leeway, but this seems so completely fundamental that I am not comfortable. So, I am assuming dueling fiats — both can happen. So I am left evaluating the advantages of the plan versus the counterplan.

2. Would the plan be "incremental change" which entrenches the death penalty? I do not see any difference between whether plan or counterplan were adopted to achieve that outcome.

3. Would the plan achieve NMD? Well, if it is true, then it

becomes a question of whether nuclear war outweighs justice. Well, that is the point of the resolution, isn't it? If I understand the resolution, that even meets the Opposition's topicality burden. Despite the consequence of NMD possibly leading to nuclear war. I would prefer justice. In any event, the Government mitigates the potential harm by suggesting that we could share technology with China and Russia, and at least some possibility of trade-off effect preventing this outcome. So, this disadvantage is minimal.

4. Would the plan or counterplan best insure state action? I am torn here. I think that the courts would be the better mechanism to stop state action, but simply repealing the EPDA provision would meet the criteria of justice. No analysis is in the round that either side is making a point of independent state actions. The Government achieves what they set out to do.

Marty Birkholt, Creighton University

By offering so many arguments against the proposition the Opposition team frequently relied on unwarranted claims which left their arguments open to refutation by the Government team on a number of fronts. Fewer arguments adequately developed and supported would have made the Opposition position easier to defend in rebuttals.

1. In terms of the resolutionality attack, the Government shows that they met the general idea "despite negative consequences," by using resolutional analysis. The Opposition does not take out reasonability as a standard and so this appears to be a reasonable interpretation of the resolution.

2. The Opposition does not dejustify justice as the criteria for the round. They offer analysis of why the Government does not want justice. However, without a clear reason to reject justice there is no reason to adopt the resolution.

3. The Opposition argues that the Government does not solve for the ills of the death penalty. However, that does not result in less justice, it only shows that even more justice is possible. It is not a reason to reject the Government's position.

4. The Opposition evokes an argument that the plan could thwart efforts to eliminate capital punishment. However by advocating this new position in the second constructive they do not give themselves a chance to address possible Government responses.

5. The Opposition never argues that the EDPA (Title 1) is just and at the point that the Government argues procedural injustice I solved by repealing this out — they gain justice. The Opposition does not respond to the Government's advantages or justice in the block.

6. The counterplan results in judicial activism and this is actually a loss of justice.

7. Impacts on the disadvantages are not developed with clear warrants or impacts.

Konrad Hack, Point Loma Nazarene University

Wow! This is an absolutely fantastic debate — from my perspective, there has been no finer final round in the five years I have been to the NPDA. Thank you to both Berkeley and Wyoming. I am so sad to vote against Wyoming two years in a row, but my conscience tells me that Berkeley wins this debate and I believe the plan is advantageous to both the *status quo* and the counter-plan. Finally, I believe that the Government team is topical.

1. Topicality: There are two answers that the Member of Oppositions fails to address — reasonability is the only standard and the criterial arguments. I do think the case is reasonable in terms of its interpretation of the resolution. Additionally, advantages versus disadvantages do not seem relevant as the Government argues that only justice matters.

2. Counter-plan: The Opposition misses a key argument in the debate here. Because of the very law that the Government claims as the problem exists in the *status quo*, the case could never get to the court. There is no jurisprudence for the court to act and so I think they do not do it. The turn on judicial activism seems underdeveloped, so I do not evaluate it. This leaves me with the *status quo* versus the plan.

3. Disadvantages: I think Will's answers on intrinsicness are great. I am not sure *why* the plan is uniquely getting bipartisanship. It seems to me that we can ban NMD and the Bush Tax Plan. The Member of Opposition really does not seem to address this issue. In fact, I have no answer on any flow for these arguments. As such, I do not weigh them versus the plan.

4. Movements: This one is tough for me. I really do not get a lot of analysis on either side of the movements debate. I hear first line claims indicating that stepping-stones to decrease the death penalty are key for movements and legislation crushes movements.

I am not sure which argument to adopt. It seems to me that this would have been the best place for Mike and James to invest more time. If you rid yourself of the death penalty, that then destroys the movement. This would then flip the case and I vote Opposition. But I do not vote here because I could not vote for the killing of more innocent people on account of a *possible* movement. So I vote for the Government.

Edward S. Inch, Pacific Lutheran University

Congratulations to both teams. This is an important achievement in anyone's debate career. This was an interesting round and one that took some unexpected turns.

On the topicality argument, the resolution says that "despite key consequences we should act in accord with principles." The Government says that the principle is justice, the negative consequences are all the harms associated with the death penalty. Yet the case gives us a means to overcome the negative consequences. This means that the Government supports the proposition "because" of negative consequences, action should be taken.

While I agree with reasonability as a standard for ground division, the Government has no argument in favor of its division. Reasonability only works if other reasons can be made and that is not here. So, I will vote on the resolutionality of the case.

Al Johnson, Colorado College

The Government does present a current problem in the *status quo* and one that I agree with. This is a serious problem, however:

1. I do not believe that the Government upholds the resolution. I do not see any real negative consequences to uphold "despite negative consequences" I could vote on this alone.

2. The Government has little solvency. The Opposition is correct in that changing the federal law will do nothing to change state laws, just in

federal cases and in federal courts. I respect and believe that the majority of harm occurs in the states, in state courts.

3. I do not see anything in the debate that prevents either the Opposition or the Government from fiatting the Supreme Court. This would seem to solve better as this effects both state and federal courts. I do not agree that the Government's plan will lead to nuclear war, but it seems a better way of solving.

The Government is not resolucional and the Government's plan offers little solvency. The Opposition's counterplan solves better than the Government plan. Good round.

Sharon Porter, Northern Arizona University

Congratulations to both teams!

I feel compelled to comment on a few of the positions that emerged during the round and provide an general overview of the Government case before discussing the reason for decision. First, I had difficulty with the Opposition position that Government wanted to destroy debate when it was the Opposition that used generic, unlinked disadvantages with nuclear war impacts. Second, especially in the final rounds of nationals I have a problem being told by Government that topicality is not an a priori issue. For me, topicality is always a priori.

The Government case was constructed in such a way to give them, what some might say, an unfair advantage in the round. The underlying concept was rather simple. However, analysis and language masked clarity and by the time Opposition could figure out what the thesis actually was, Government was capitalizing on the drops and extending arguments from them. Therefore, Opposition found themselves in a defensive rather than an offensive position very early in the debate.

That said, I grant that Government is topical, at least reasonably so. The value in the round, justice, is met through due process. The counterplan needed more specificity. Both solvency and workability of the counterplan was questionable. If the counterplan can't be enacted, I can't ballot on it. Sorry, but....

I enjoyed the round and wish both teams the best.

Bonnie Stapleton, Colorado College

I am fundamentally unhappy with this round because there are about 500 people here who will now debate like these two teams who are in finals. Frankly, I think you all whimp out on the resolution. Look, the only thing that makes NPDA different from any other form of debate is the spontaneous nature of it deriving from the resolution. Why don't you all debate that? Give it a try? Give it something besides lip service, which is what you all do here.

The case is not an intuitive warrant for the resolution (if you had said let us keep the death penalty as it is because it serves a good principle despite all the problems in Illinois, etc. that would be an intuitive warrant for the resolution.). Counterplan, etc, also does nothing to negate the resolution. Challenge yourselves some — see if you are up to it instead of taking the easy way out. You all kicked a lot of butt to get here and you deserve the utmost respect for this accomplishment. I admire you all greatly. I am asking you to think about not doing this the easy way.

RFD: Wyoming is right that this is not the topic. I wish that they had done an even better job with this. Debate the topic, don't just debate.

Robert Trapp, Willamette University

I would like to take this opportunity to comment on the choices of argument strategies made by both teams.

First, I thought this debate was an excellent opportunity for debaters to compare the wisdom of pragmatic arguments (arguments based impacts of actions) to principled ones (arguments based on principles that are nonnegotiable even in the face of negative impacts). The contrast between these two types of argument has been considered by several argumentation theorists: Richard Weaver considers principled arguments more ethical than pragmatic arguments; Albert Jonsen and Stephen Toulmin consider principled arguments tyrannical. The Government begins with a principled argument saying we are willing to take this action regardless of the outcome. The Opposition never really frames an argument to say why outcome should trump principle. Although the Government did not do as much with the argument as they could have, I would have liked to see this debate focus more on the issue of principle vs pragmatism.

Second, the opposition chose an argument which required a rather elaborate cause and effect relationship. Passing the Government's proposal,

the opposition claimed, would lead to bipartisanship which would in turn lead to the passage of Nuclear Missile Defense which would in lead to a series of destabilizing actions which would result in nuclear war. These kinds of causal arguments are quite common in cross-examination debate because of the way evidence is conceptualized by those practicing that form of debate. Cross-examination debaters (I hope I am not stereotyping here) generally conceive of evidence as quotations. I think that the rules and norms of parliamentary debate has led to a different conceptualization of evidence—one that makes proving these elaborate causal relationships more difficult and problematic. Parliamentary debaters normally conceive of evidence either as information well known in the public sphere, as data that debaters are able to cite from memory, or as values. Given this conceptualization of evidence, elaborate causal arguments such as the one used by the opposition are quite problematic. The problematic nature of such an argument given the available evidence is what allowed the Government response (Do you really believe that procedural changes in the administration of capital punishment will lead to nuclear war?) to be greeted by laughter from the audience.

All in all, four very fine debaters represented all of us extremely well. My warm congratulations are extended to all of them.

Dan West, Rice University

Thank you all for a great round. Before I go into reasons for my decision, I want to comment briefly on some non-voting issues that I think are important. I love debate, and it is a joy to coach and judge parliamentary debate. While I think the Government in this round presented a solid case, I am somewhat dismayed at where the round went from there. Call me Old School or whatever, but did we really need all those arguments on the flow? To be a good advocate it is important to choose arguments wisely — I was greatly saddened by rebuttals. No one took time to convince me by choosing the most compelling arguments. Very little persuasion went on at all. I realize that you all believe this style is good because it wins and I am sure that many will adopt this same strategy next year. But is it really the best you could do? I think not. I urge you to consider what you could do by doing less in the round — more gutsy to me. Maybe you get my point, maybe you will strike me forever, but that is where I am coming from. Enough said.

I vote Government because the Government is resolutional. The Opposition never shows how the Government decreases justice. Additionally the Opposition never names a case that will go before the

Supreme Court and additionally they can not get around EPDA laws that ban courts from hearing the case. Impacts on the bottom of the counterplan are bogus as the Government points out. Nuclear war? World economy? No, I buy the Government's analysis there. The Opposition asks me to choose between the plan and the counterplan and, as the Government's notes, I can do both. So I will. The Government case sounds good and provides justice. Yeah! I go with the Government.