A Coach's Notes[1]

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Resolved: Federally standardized, electronically readable drivers' licenses & ID cards and their associated federal database should be implemented throughout the United States.

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Introduction

This is the second edition of the 2006 CDA season. If you did not receive October's Notes please email me and I will send it to you. Accompanying this document is a transcript of my notes from the final round in two formats: transcript and flow chart. I email these along with a copy of the packet to CDA-registered and CDA-interested coaches usually within two weeks after a tournament. I hope that you will find them useful teaching tools.

I would appreciate any feedback you have, good and bad. The best comments and suggestions will find their way into subsequent issues. I would also consider publishing reasoned comments or replies from coaches or students in subsequent issues. If there is sufficient interest, this could evolve into a CDA newsletter.

Burden, Burden, Who's Got the Burden?

In this month's final round the Second Affirmative began his summation by asking the judges to consider what the Negative had to prove to win the debate. Now, we are all taught that the Affirmative has the burden of proof, so why does the Negative have to prove anything? On the other hand, this seems a bit unfair. Does it mean that the Negative never has to prove anything? Can the Negative win the debate simply by denying everything the Affirmative says?

It's useful for both the Affirmative and the Negative to clearly understand what they need to do to win the debate before the debate starts. When preparing for the debate it

provides a standard by which to judge the quality of your contentions. It allows you to measure the progress of the debate as you compare your arguments to those of your opponents. Finally, at the end of the debate it can be very effective summary to lay out these requirements for the Judge in order to demonstrate that you have met them and that your opponents have not. For the Judge understanding these burdens provides a guide to weighing the arguments of each team when making his decisions.

This month I'd like to consider exactly what we mean by the "burden of proof" and how it applies to debate. As we will see, both sides have certain responsibilities that they must meet in order to win. The structure of a debate makes those responsibilities relatively even. Given a well-structured resolution, neither side should have any particular advantage over the other.

Presumption and the Burden of Proof[2]

At the start of any debate we need to establish which side has the benefit of "presumption" and which side has the "burden of proof." "Presumption" determines which side will prevail if the debate doesn't occur. Presumption is the default result: in the absence of reasonable arguments to the contrary, the side that has presumption wins. The "burden of proof" is the exact opposite of presumption. The burden of proof is the burden of persuasion. The side that does not have presumption is required to persuasively provide reasons that are significant enough to overturn the presumption. Only by meeting the burden of proof can they prevail.

In debate, we agree by convention that the Negative team has the presumption, and the Affirmative team has the burden of proof. That is, we agree by convention that the resolution should not be adopted[3] unless the Affirmative convinces us that it should. This convention leads to several consequences. First, this is the reason that the Affirmative is given the opportunity to speak first. In the absence of a presentation to the contrary the side with presumption has no need to say anything. Second, this is the origin of the convention that policy resolutions should be stated such that the resolution advocates a change from the status quo. We often assume, though not necessarily correctly, that in the absence a significant reason to the contrary, the status quo is preferred to any alternative. Finally, this leads to the convention that a tie goes to the Negative. If the arguments are evenly balanced, the Affirmative has not met its burden and the presumption holds.

The concepts of presumption and the burden of proof arise in other areas of argument. The one we are probably most familiar with is in the legal system's law of evidence. In the United States, a defendant is presumed innocent in the absence of significant proof to the contrary.

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[2] This section relies on material from "Argumentation: The Study of Effective Reasoning," by David Zarefsky (2001), Lectures 5 and 7.
[3] Many CDA debaters might say, "the resolution should be negated." As a side note, I hate the phrase "negating the resolution" in all its many forms. Whether it is grammatically correct, the mere sound grates on my ears and makes me cringe.

Note that presumption and the burden of proof are static, in that they don't change sides during the debate. The Affirmative always has the burden of proof, and the Negative always has presumption. At the end of the debate, the Affirmative must show that it has met the burden of proof; the Negative is not required to demonstrate anything.

Prima Facie Case

The Affirmative team meets the burden of proof by providing significant reasons to adopt the resolution. They start by giving a "prima facie" argument, one that in that absence of any arguments to the contrary would lead us to accept the resolution. The role of the First Affirmative Speaker is to present a prima facie case in favor of the resolution. The arguments advanced should be reasonable and significant.

A reasonable argument is one that most people—and particularly the judge—would accept. This month's resolution advocates a national, electronic identity card, and a prima facie case might be something like this:
1. The current system of drivers' licenses and other ID is flawed because these forms of ID can be easily counterfeited.
2. Counterfeit ID aids delinquency, crime and terrorism.
3. A national electronic ID would be difficult to counterfeit and reduce delinquency, crime and terrorism.

If you accept these three contentions, then you would likely agree to support the resolution.

The argument must also be significant. Suppose that instead of the three contentions above the Affirmative had argued:
1. Drivers licenses as designed by the states are not very nice looking and they are all different.
2. A national electronic ID would be pretty and uniform and could be designed to play music.

Even if you didn't know much about the issues surrounding a national electronic ID card, you probably wouldn't agree that it was worth the trouble just so everyone would carry a attractive, noisy piece of plastic. This argument just isn't significant relative to the issue at hand.

The level of significance required depends on the costs and consequences of the resolution. If we adopt the resolution, it may cost money to implement, we may have to curtail certain civil rights, there may be questions of morality and so forth. Of course, accepting the resolution may protect other rights, provide benefits that exceed the costs of implementation, prevent greater harms from occurring and so forth. These issues will be argued back and forth in the debate. But the Affirmative should certainly start off with prima facie arguments that rise to the significance of the resolution.

We can again take a cue from the legal field. In the law of evidence, generally the more serious the consequences of error, the more proof required. For example, in criminal cases the prosecution usually must deliver proof beyond a reasonable doubt: guilt must be satisfied beyond a moral certainty or entirely convinced (think of it as 90% certainty).

This makes sense if one considers the severity of capital punishment, the death penalty or life imprisonment. On the other hand, most civil cases require a lesser standard of proof: a preponderance of the evidence which means more likely than not (think of it as over 50% certainty). There is also an intermediate burden of proof: clear and convincing evidence which means substantially more likely than not. This intermediate burden of proof is akin to the degree of proof required in debate.

In debate, significance has three implications. As noted last month, defining terms in a way that robs the resolution of significance is unreasonable in that it robs the debate of all meaning. Why debate issues that lack significance? How can you debate a resolution where the slightest reason justifies acceptance or rejection? The second consequence is that Affirmative must do more than show accepting the resolution is just a little bit better than rejecting it. Most of the arguments we make are uncertain—it's likely that the costs and benefits will not be precisely what we claim. Unless the resolution is strongly supported, it may not be worth the risk that we are wrong. Finally, significant arguments require a significant response—simply dismissing an argument or bringing up a trivial objection or counter-argument is not sufficient. The Negative must reply in kid to the Affirmative's arguments.

The Burden of Rejoinder

So far it sounds like the Negative hold all the cards. They benefit from the presumption that the resolution should be rejected, while the Affirmative has the burden of proof. The Affirmative must present a prima facie case that is both reasonable and significant in relation to the consequences of adopting the resolution. Presumption and the burden of proof do not shift during the debate—unless the Affirmative meets the burden it should not win.

However, once the Affirmative has presented a prima facie case we have a justification for accepting the resolution. At this point, the Affirmative should win the debate unless the Negative responds appropriately. The Negative now has what is called the "the burden of rejoinder," the requirement that they provide reasonable and significant responses to the Affirmative's case. The Negative can put forward their own independent arguments against the resolution or they can challenge the arguments put forward by the Affirmative. Generally they will respond with some combination of these, presenting their own Negative contentions and providing rebuttal arguments to the Affirmative contentions. To the extent that the Negative contentions clash directly with those of the Affirmative, the Negative will be doing both of these at the same time.

With respect to the national electronic ID and the Affirmative prima facie case outlined above, the Negative might contend:
1. A uniform national ID could be misused by the government to trace the activities of citizens and penalize political opponents or other groups.

By way of rebuttal they might add:
2. All ID's risk being counterfeit, even those proposed by the Affirmative.
3. Any technology proposed by the Affirmative could be used to improve drivers' licenses avoiding the need for a new system.

The first contention opens up a new area of argument, violation of civil rights. The second and third challenge the significance and inherency of the Affirmative by suggesting the new ID might not eliminate the problem of counterfeiting and if it did, the technology could be used without a national ID.

Unlike presumption and the burden of proof, the burden of rejoinder trades back and forth during the debate. Once the Negative has responded, the Affirmative now has the burden of rejoinder, and must reply in kind. The burden trades back and forth as arguments are made and countered, until the debate ends when the speeches and time run out. The Judge then decides which side has won.

Obviously, the burden of rejoinder is the reason why the Affirmative and Negative alternate in making speeches, each side having the opportunity to counter the other. It is also why we value and judge debates primarily on the clash between the two teams: clash is a simple way of describing the burden of rejoinder bouncing back and forth between the two sides. But we can be more precise about the implications of the burden of rejoinder.

First, like the burden of proof, the burden of rejoinder must be met by reasonable and significant arguments. Suppose the Affirmative responded to the first Negative contention above, on civil rights violations, by saying, "No, the government won't violate individual rights." The Negative has backed their claim with both a method—using the electronic ID to trace the movement of individuals—and a motive—to penalize their opponents—that would seem reasonable and significant to most of us. Simply asserting the contrary is not much of a response, and doesn't rise to the level of reason or significance of the Negative contention. The Affirmative would still have the burden of rejoinder with respect to this argument.

Second, this means that the burden of rejoinder can be considered on an argument by argument basis. If the Affirmative had replied to the Negative's second contention by asserting that technology now permits information to be encrypted in an electronic ID in a way that cannot be read or copied except by authorized parties, it would have met its burden on this argument. The Negative could simply point out the Affirmative hadn't really answered their first contention, but the Negative would have to come up with a new response to the Affirmative reply to their second contention.

Third, the burden of rejoinder is meant to keep the debate moving forward. Not only do you have to respond, but once you've been properly answered by your opponents, you have to come back with something new. So the Affirmative starts off saying electronic IDs would be hard to counterfeit. The Negative replies that all IDs are subject to the risk of counterfeit, even if it's hard. The Affirmative cites new encryption technology that prevents unauthorized reading or copying. At this point the Negative can't say, "but all IDs are subject to the risk of counterfeit." The argument has moved on to the specific technology cited by the Affirmative. The Negative might say, "there is a hacker who duplicated an electronic ID in front of an audience at a convention and that shows this new technology isn't hard to counterfeit." Or else the Negative might ask, "Unless these

IDs can be easily read to verify a person's identity, they would be much less useful than a driver's license which can be checked easily." Either of these arguments moves the issue forward; repetition does not.

How You Take Notes Matters

Finally, the need to effectively weigh whether debaters have met the burden of rejoinder is a very good reason to take notes using the flow chart format during the debate. Take a look at the two formats in which I have presented my notes from this month's final round. If you use the transcript format, in order to see the replies by one team to an argument made by the other you have to flip through the pages in a clumsy and time consuming fashion.

If, instead, you had taken notes in the flow chart format (remember that I use an 11" by 14" artist sketch pad so everything is on one page) you can see the entire debate at a glance. As you look across the page, the Affirmative contentions are followed by Negative replies which are followed by Affirmative rejoinders. A bit lower, the Negative contentions are followed by the Affirmative replies which are followed by the Negative rejoinders and so on until the end of the argument or the end of the debate. By scanning across the page you can see the flow of each argument, tell at a glance where the burden lies in each case, see who has and hasn't responded and see who has simply repeated rather than extended an argument. There is a method to this flow chart note-taking madness after all!