

A Coach's Notes¹

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Resolved: That soft drinks with added sugar should be taxed to discourage their consumption.

Contents

- **Introduction**
- **Debate the Resolution Not the Packet!**
- **A Question of Balance**
- **Yes or No?**
- **How Would You React?**
- **The Rules of Debate**

Introduction

This is the fourth edition of the 2008-09 CDA season. If you would like to receive the previous editions of these Notes, please email me and I will send them to you. Accompanying this document are my notes from the final round at Westfield in two formats, transcript and flow chart. The resolution and packet has been sent to all coaches in an earlier email.

These Notes are intended for your benefit in coaching your teams and for the students to use directly. I hope that you will find them useful teaching tools. Please feel free to make copies and distribute them to your debaters.

I 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 signed, reasoned comments or replies from coaches or students in subsequent issues. So if you would like to reply to my comments or sound off on some aspect of the debate topic or the CDA, I look forward to your email.

Debate the Resolution Not the Packet

I am repeating myself with this particular topic. But in the three rounds I judged on Saturday—including the final round—not one Affirmative team bothered to define or explain the resolution. Every team implicitly assumed the resolution meant enacting “the

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(New York Governor) Patterson administration’s proposal for an 18% tax on sugary soda and juice drinks,” the very first line in the packet. This is definition, but it is definition by default.

The Affirmative has the right to make a reasonable definition of terms. A careful reading of the resolution can provide the Affirmative with important tactical advantages. This month’s resolution has four important phrases: “soft drink,” “added sugar,” “taxed” and “discourage consumption.” Consider each in turn.

A “soft drink” is usually defined as any drink without alcohol. A “hard drink” has alcohol. So the discussion is not necessarily limited to soda or energy drinks. Fruit juice, lemonade, coffee, tea, milkshakes, even milk qualify.

What is “added sugar?” Again, soda and energy drinks are easy as they are heavily sweetened. But a lot of juice drinks have high fructose corn syrup in the ingredients listed on the label. You can also buy bottled, pre-sweetened tea and coffee drinks in most supermarkets. Would you also include Dunkin’ Donuts and Starbucks because many customers add sugar? Another interesting idea raised by some of the more chemistry-savvy debaters is that many artificial sweeteners are chemically sugars, they just aren’t useful to the body as a source of calories. Does the resolution cover diet soda?

“Tax” can be quite complex. Is the amount determined based on the price of the drink, like a sales tax? Or so much per drink, like a bottle deposit? Or by the amount of sugar added so it is focused on the goal of the resolution? Cigarettes are sometimes taxed by the pack, which are not all uniform, while the tax on alcohol varies by item based on the alcohol content. And how is the tax collected? Alcohol and cigarette taxes are paid by the manufacturer or importer. But sales tax is assessed at the cash register, as is the deposit on returnable bottles. Both the amount and how you collect it may determine how effective it is.

Discourage can mean a lot of things. If your parents tell you not to watch television, they are “discouraging” you, but it may not have much effect. If they limit your hours, that’s something else again. And if they lock the TV with a password so you can’t watch then they have taken the idea of “discourage” to a different level. Which works here?

For the Affirmative, carefully interpreting the resolution is a strategic and tactical choice that can strengthen their case. Compare the default interpretation—Gov. Patterson’s 18% tax—to the following:

“The Affirmative interprets the resolution as follows. A tax will apply to all pre-packaged non-alcoholic drinks based on the amount of sugar added. So the tax would apply to soda, energy drinks, bottled tea and so forth, and both in stores and when they are sold through restaurants or fast-food outlets. By “sugar” we mean those sugars utilized by the body, excluding any artificial sweeteners that may be chemically sugars but have no value as calories. We don’t know what level the tax should be set at, but it should be set high enough to have a significant, measurable impact on consumption, and should increase over time to continue to influence behavior towards healthier beverages.”

Granted, that’s a mouthful. But it is a clearly defined Affirmative position that covers a number of Negative attacks (see below). Also, by stepping away from setting the tax at any particular level, the Affirmative forces the Negative to argue over whether this is good policy or not. The Negative can’t argue the tax will be ineffective in reducing

consumption, because the Affirmative has defined the level of the tax as being high enough to significantly reduce consumption.

If the Affirmative is not careful in defining the resolution, the Negative has the opportunity to pick away at the meaning to create holes in the Affirmative case. This is one of the ways to use cross-ex. Consider the following:

Neg: "You didn't define soft drinks, did you?"
Aff: "Everyone knows that means soda"
Neg: "Just soda? What about energy drinks?"
Aff: "Oh yes, energy drinks, too."
Neg: "What about soda sold at McDonald's?"
Aff: "We would tax that."
Neg: "What about coffee and tea? Some people add a lot of sugar to that."
Aff: "Um, no."
Neg: "How about milk shakes?"

This sort of questioning does two things. First, with each additional drink, the Affirmative looks like they haven't really thought about their case. It may rattle them, and it plants doubts in the Judge's mind about the credibility of the Affirmative team. Second, it sets up an argument: there are a lot of ways to consume sugar in liquid form. Anything that isn't included in the tax is a drink the Negative can claim people will consume for their sugar fix. (See "How Would You React?" below.)

The Negative has an equally useful line of argument regarding the level of the tax and whether or not it will actually discourage consumption. As an exercise, you should try to work those out for yourself.

A Question of Balance

There are only two places in the world where you can here someone seriously argue that a tax on soda is an infringement of basic personal liberty and a step towards a "nanny state" where the government will dictate our every action. The first is one of many talk radio shows where the discussion quickly moves on to reported sightings of mysterious fleets of black helicopters and the need to be prepared to retreat into the hills with large caliber weapons in order to resist the imminent imposition of world government. The second is in a high school or college debate.

Those of you who saw the final round at Westhill will agree that the negative team did a convincing job presenting this argument and winning the debate. My intention is not to mock them. One of the reasons we practice academic debate is to learn how to make and defend against arguments of this kind.

Rights

Honestly now, do you really believe that every American has an inalienable right to drink Coke? Or Pepsi? I don't remember that one in the Constitution. Maybe it's in the clause after the right to boogie. But then people seem to claim so many rights these days it's a wonder there is anything that isn't a right.

And that's the first thing to remember about rights: the Constitution enumerates very few of them. Rights groups and lawyers push to extend these protections, but the courts are

generally very conservative. Cases are decided on narrow grounds and broad decisions outlining new entitlements are rare. Even when rights are extended, it may still be years before the full outline and implications are known. It was ten years before *Brown vs. The Board of Education* began to have a significant impact on school segregation, and it's still being litigated.

And More Rights

I also can't think of any "right" that is absolute. We limit freedom of speech in many ways, at many times and in every form. We restrict the practice of religion. Under the right circumstances your home can be legally broken into and you and your family can be restrained. While capital punishment may not survive another generation, we accept that police may use deadly force and maintain the most formidable military on the planet.

In the real world, rights often conflict. Justice Holmes example of shouting "Fire!" in a crowded theatre is the classic legal example of free speech versus life (being trampled to death). Most famous court cases deal with balancing those rights, one against the other, depending on the circumstances and the times.

And that is the second point to remember when dealing with arguments about rights: it's always a question of balance. It's not that the right to life is more important than the right to liberty, it's that both are important, and how we choose between them in various circumstances that matters.

Rights that Slide Away

Arguments about rights are often framed in dire terms. The arguments over wiretapping during the Bush administration were like this, with some contending it would lead to a massive government invasion of privacy. Yet there has been surprisingly little evidence of any real harm, given the amount of outcry. It is hard to know if you've been secretly wiretapped because, well, it's a secret. But no one has presented examples of mass arrests or the other government abuses that they claimed would result. The harms cited are all potential. The government *might* use this in an abusive fashion, not that they have. I don't mean to suggest that the policies were or are therefore correct, only that case is rarely well argued on either side.

So the third thing to remember about rights arguments is that they are often "slippery slope" arguments. Even if there is no harm now, the policy could be used with ill intent and there could be serious consequences in the future. Contrary to what many think, slippery slope arguments are not incorrect. But they are not predestined. What steps have to occur before harm is done? How likely is it that all those steps will occur? What measures are in place to prevent those steps from occurring, and how effective are they?

Making and Defending Rights Arguments

I've given you three general concepts about rights: there are few specifically enumerated rights, rights are never absolute, and harms are often abstract or in the future and not real in the present. How can use these concepts in debate? Since the Negative made a strong rights argument in the final round at Westhill, let's start by analyzing it and then look at how to respond to it.

From my notes, the first Negative contention and supporting arguments were:

N1: The tax is contrary to the ideal of personal liberty

- Aff. shows fundamental disregard or misunderstanding of personal liberty
- People should have the right to buy what they want without harassment
- This tax is the first step towards a fascistic nanny state that dictates what and how much we can consume
- Adopting the resolution won't be effective, but will be tremendously symbolic

This argument ignores all three of the important issues described above about rights arguments. First, they never define personal liberty or show how it derives from an enumerated right in the Constitution or one expounded by the courts. They never explain why freedom to consume flows from personal liberty. It's simply an assertion. Second, there is no concept of balance or proportion. The right is asserted as absolute without qualification. Third, they present a classic slippery slope argument with no discussion of process or likelihood. But "fascistic nanny state" is very colorful.

How could you strengthen this argument? Let's rebuild it by considering the three factors discussed above:

N1: The tax is contrary to the ideal of personal liberty

- The Declaration of Independence asserts the right to "life, liberty and the pursuit of happiness"
 - The Tenth Amendment reserves all non-enumerated rights to the States and the people
 - The Constitution gives the power to tax to raise revenue, not to alter behavior
- While the government has taxed and regulated harmful products, it has never taxed or limited access to an inherently safe product, like sugar, to change behavior
 - Trans fats and tobacco are harmful, soft drinks are not
- Because this is a new use of tax powers, accepting this tax to discourage consumption could be the first step in the government dictating "healthy" behavior
 - We have already seen attempts at lawsuits against McDonald's and others.

This could be filled out a bit more, but it has the essentials. The claimed right is grounded in the reserve clause and the taxation powers. Examples distinguish between inherently harmful products and inherently safe products. The slippery slope argument is based in the claim that this use of tax power is significantly different from what has been done in the past. It can certainly be improved upon, and it's a bit less colorful, but on the whole a stronger argument.

How should the Affirmative reply? First, they should question whether this is really a right, and whether, on balance, the action is worthwhile. Just because the Constitution reserves rights to the people doesn't mean this is actually a right. And just because taxes are primarily for raising revenue doesn't mean it can't be used for other things. (What does the Constitution say about tax powers? Do you know?) The income tax code is quite complicated, because the government is using it as a tool for behavior modification and income redistribution, not simply revenue gathering. Sales tax doesn't apply equally to everything you buy, either; some items are excluded. Alcohol is both taxed and its use is restricted: you can join the Army before you can vote and you can vote before you can legally buy a beer. Society has tolerated many taxes and restrictions for a long time without turning into a "nanny state," including heavy regulation of the food and drug industries. Is this tax really any different?

It is a good debate team exercise to review and critique arguments from the last tournament in this way. Have someone present the argument, explain its strengths and weaknesses, and then present an improved version based on that critique. Another debater should then present an attack on the improved argument, and you should compare that attack to what you observed in the tournament. If you can classify the argument as belonging to a certain type that you can expect to see again, you will have one more tool in your kit. Even if the argument is unique to the topic, you will improve your analytical skills for the next round.

Yes or No?

It is probably never a good use of cross-ex to insist that your opponents answer a question “yes or no.” Now I’ve learned never to say “never” with respect to any tactic in debate. Any time I’ve told anyone categorically not to do something, it seems that a debater in the next round uses that very same tactic brilliantly. But most of us only reply “yes or no” to questions like “Would you like French fries with your Big Mac?” And if you ask a debater to answer “yes or no” they will immediately assume a trap and find fifteen different reasons why that answer is inappropriate and unfair.

So I’ve just given you my first reason not to insist on a “yes or no” answer: you aren’t likely to get it. Asking a question that you know will only provoke an argument is a waste of your cross-ex time. You’ve only got three minutes to ask questions. Bickering over the form of the answer doesn’t help you get responses you can use in your next speech.

The second reason not to insist on a “yes or no” answer is that it makes you look bad. Debaters always seem to forget that there is a judge in the room, and whatever you may think about judges, they are usually reasonably observant adults. If a debater is trying to squirm out of giving an obvious reply to a simple question, they will see that. If a debater is trying to browbeat another into giving an overly simple answer to a complex question, they will see that too. Either behavior—squirming or browbeating—is likely to count against you.

The third reason not to insist on a “yes or no” answer is that you don’t need it. As just noted, there is a judge in the room who is evaluating what is going on. An opponent who avoids an obvious answer has already given you the reply you need. A proper series of questions will give you more ammunition than trying to force an unfair response.

Consider the following exchanges with respect to the Negative’s rights argument from the final round at Westhill that was discussed above. Remember, made up dialog will always sound a bit artificial, and if you feel the replies sound forced, work out your own sequence. The “yes or no” approach would be:

Aff: “Yes or no: The Negative believes rights are more important than saving lives?”

Neg: “That’s an unfair question. It depends on the circumstances.”

Aff: “It was your contention. Yes or no?”

Now consider a softer alternative:

Aff: “Your first contention is that the tax is a violation of personal liberty?”

Neg: “Yes. That was our first contention.”

Aff: “So the right to drink Coke is more important than saving lives?”

Neg: “We don’t believe the tax will save lives. That’s our second contention.”

Aff: “But hypothetically, if the tax saved lives, would you still believe that liberty is more important?”

Neg: “We don’t believe the tax will save lives.”

Aff: “Are you saying that your first contention only matters if the tax is ineffective?”

At this point you have what you want regardless of what the Negative replies. They have to decide whether the rights argument stands on its own, or whether it is linked to the effectiveness argument. If it stands alone, then, whether the Negative says the words or not, they believe saving Coke is more important than saving lives. Suppose the Negative replies:

Neg: “No. The tax infringes personal liberty and should not be allowed.”

Aff: “So lives are less important than a tax on soda?”

Neg: “I didn’t say that. Besides, the tax won’t save lives.”

Oh yes you did! And the judge will see it.

If the Negative links liberty to the effectiveness argument, then if you demonstrate the tax will reduce consumption and obesity and save lives then you defeat both arguments.

Neg: “We don’t believe you should violate personal liberty for a tax that won’t work.”

Aff: “So if we demonstrate the tax will save lives the personal liberty argument fails, correct?”

Again, you don’t really need an answer to that last question.

Suppose the Negative continues to stall?

Neg: “As I said, the tax infringes on personal liberty, and it will not be effective.”

The judge will see they are being wishy washy. What you have to do is to make that point in your next speech.

Aff: “In cross-ex the Negative danced around my attempt to get them to tell you whether they felt lives or liberty is more important. But this is a major issue for their case. It’s difficult to accept their first contention on a stand alone basis. Since the founding of the US, we have taxed all sorts of things to implement policy and affect behavior—tobacco, alcohol, imports, sales, income—and yet we remain a free people. To suggest that Americans or the courts would consider a tax on soda a violation of personal liberty is just silly. On the other hand, if their position is that it’s only a violation of personal liberty because it won’t be effective, then the entire Negative position is reduced to the an argument over whether the tax will be effective in reducing consumption, fighting obesity and saving lives. While we are waiting for a clear answer from the Negative, let’s look again at why the Affirmative believes the tax will be effective...”

If the Negative had responded differently, you would still want to exploit those answers in your next speech. No matter how effective your cross-ex, it’s worthless if you don’t bring the results into your arguments.

Cross-ex is like a journey with an unwilling companion: you are trying to take your opponent somewhere they don’t want to go, and they know that. So you are unlikely to bring them the whole way, especially if they are a good opponent. But you don’t need to bring them all the way to the destination. Sometimes all you have to do is get them started a little ways down the path. Sometimes all you have to do is get them to turn in the right direction.

You do need to know where you are trying to go. And you do have to keep turning nudging your opponent onto the path. Insisting on “yes or no” is like trying to get them

to go the whole way in one quick step. It probably won't happen. But patience and persistence will pay off.

How Would You React?

Extemporaneous debate doesn't give you much time to consider the meaning and implications of the resolution. You also have very little research material to work with, and what you have, while selected with some care, is likely to miss many things you'd like to know more about.

One way to compensate for this is to develop the ability to think through the likely impact of adopting or not adopting the resolution. Newton's second law of motion—for every action there is an equal and opposite reaction—has a social counterpart. For every action there are multiple and complicated reactions. One of the most fruitful ways to develop Negative attacks is to think about what those reactions might be.

I only judged three rounds this tournament, so perhaps there are teams that brought these arguments up, but I didn't hear any of them myself.

1. Development of new drinks. Soft drink manufacturers are in business to sell product. If the government taxes their product to reduce its consumption, they aren't going to simply let their business fall away. They will react. The Negative argument I often saw was that you would be depriving poor people of their favorite drink, and the Affirmative would reply they could always drink water. But that isn't what would happen in the real world.

If people want sugar, soft drink manufacturers will give them sugar. Most of the fruits and vegetables we consume have been bred for certain traits, like color, taste, firmness and, of course, sugar content. Manufacturers will scour the globe for naturally super-sweet variants to turn into the next blockbuster soft drink. Don't laugh! How do you think we got sugar beets and high fructose corn syrup? Super-sweet oranges anyone? How about corn soda with added cola flavoring?

2. Actions by individuals. Is obesity biology or choice? If it's biology, then taxing soda won't help. If it's choice, people will find a way around it. First, people who crave sugar may switch to things that aren't taxed. Coffee? Tea? Milkshakes? As noted above, the Negative wants to zero in on anything the Affirmative doesn't tax to argue that the resolution won't stop obesity, just what people consume to become obese. Second, why not add your own sugar to taste, just like we do with coffee and tea? In conjunction with (1) above, manufacturers may provide unsweetened versions of current drinks to consumers for just that purpose, a Coke Zero where the "Zero" is really zero, and a packet of sugar taped to the bottle or can.

3. Enforcement and smuggling. Every tax has to be collected and enforced. The higher the tax, the more profitable it is to avoid it. People regularly drive across state lines for cheaper gasoline, alcohol and tobacco due to differences in state tax levels. Put a high enough tax on Coke (or Pepsi) and you provide an incentive for crime. There have been articles that the percentage share of illegal cigarettes in New York is well into double digits, and the profits go to fund terrorism. Even if you don't know these sorts of details,

the Negative can connect the dots for a nice disadvantage here. And if you think soft drinks are too bulky to smuggle, remember Prohibition.

In debate, the Affirmative and Negative must always try to think through the consequences of the resolution. For the Affirmative, it helps you decide how to interpret the resolution to your advantage. For the Negative it provides a rich source of arguments. In CDA extemporaneous debate, with limited time and research material, learning to think about consequences is a valuable skill to develop.

The Rules of Debate

When you get down to it, there aren't a whole lot of rules in debate: the order and timing of the speeches and the use of prep time are the only hard rules. Things like the general requirement that the affirmative has the burden of proof or presumption and the right to a reasonable definition of terms; that both sides have the burden of rejoinder; that there should be no new arguments in rebuttal; that judges should decide based primarily on the arguments, these are rules but subject to interpretation and hard to enforce. We expect everyone to be honest and civil. Lying or falsifying evidence will get you thrown out, as will cursing your opponent. The CDA also has rules that limit electronics and the research materials that can be brought to a tournament, and other leagues and competitions have similar but different standards.

Beyond that, there isn't much else. In particular, while philosophers and scholars since at least Aristotle have provided recommendations on the proper form and presentation of argument, none of that is incorporated in the rules of debate. If you aren't logical, your opponents may hand the judge your head on a platter, but we've all seen appeals to emotion help out a case now and then. And demonstrating that an argument is incorrect is not all that easy.

I have had a number of coaches, debaters and judges come up to me at the past two tournaments noting that a number of teams have taken to either quoting the rules and telling a judge they had to do something, or appealing to the judge to enforce a particular rule against their opponents. I think this is a bad thing and I'd like to nip it in the bud.

First, as a judge I don't like to be told what to do. Your job as a debater is to persuade me to accept your side of the resolution. If you tell me that "the rules of debate" require me to come to a particular conclusion, you are asking me to abdicate my responsibilities as a judge. Make your argument, but let me make the decision.

Second, citing rules is a very risky thing to do. We may not agree on what the rules are. Quoting rules in debate is like telling the judge the god Zeus has decreed in your favor. If the judge doesn't believe in Zeus, or has a different revelation from him, you're in trouble.

Finally, as noted above, there aren't a whole lot of clear rules in debate once you get past the order and timing of speeches. Most everything else is a matter of interpretation. Has the Affirmative met the burden of proof? Is definition of terms reasonable? Is that a new argument raised in rebuttal? These things call for argument, not authority.

Whenever your opponent does something that you think is incorrect, don't cite a rule; explain to the judge why they are wrong. If you think the Affirmative's plan strays too

far from the packet, make a topicality argument. But remember the resolution determines what is topical. The packet is only there to give you some background material to use. If the Negative uses something in their rebuttal that is new to the debate, don't say that new arguments are not permitted in rebuttal. Explain how it doesn't follow from anything that has been said before, note that it is unfair of them to bring it up so late, and refute it just in case.

Probably the worst argument you can make is something like: "We said this, that and the other thing, and so by the rules of debate, they have to do X (or the judge has to decide Y)." This is a bad tactic for many of the same reasons insisting on a "yes or no" answer in cross-ex is a bad tactic. They aren't going to do it and it makes you look bad.

If you are correct, and there is a rule that supports your argument, then there is a reason for that rule. Aristotle didn't dictate rules of rhetoric, he explained and gave reasons why certain ways of arguing were correct and others were incorrect. It was later and lesser scholars who ossified it into a system of rules. You will be much more effective if you explain the reason rather than quoting the rule, and ask the judge to agree with you rather than insisting. Which of the following do you think works better?

"In order to win this debate, the Affirmative has to show that a tax on soda will save lives, because they have the burden of proof. So you must find for the Negative."

"In this debate, we've shown you that a tax on soda will have little impact on consumption and therefore won't save many lives. We hope you agree that by failing to show any benefit, the Affirmative has not made a case to adopt the resolution."

Over the past couple of months I've heard the following "rules" cited.

1. *New evidence cannot be used in a rebuttal speech.* This isn't correct. The general rule is that new arguments cannot be introduced in a rebuttal. However, existing lines of argument can be supported by additional argument, evidence or reasoning. Existing lines of argument can also be extended by replying to an argument made by the opposing team. An argument is "new" only if it doesn't flow from arguments made before.
2. *The only plan that can be used is the one described in the packet.* There are no restrictions on the Affirmative interpreting the resolution other than that the interpretation be reasonable. The Negative has the right to challenge that interpretation if they can show it is unreasonable. The packet is just background information which debaters may use or not as they please. Debate the resolution, not the packet!
3. *Counterplans are not permitted in CDA.* Actually, the rule is that the Affirmative is not required to present a plan in CDA debate, but need only argue in favor of the resolution. Counterplans are permitted. In the February 2008 tournament at Wilton High School, the Negative team won the debate with a counterplan that was set up by some particularly well-planned questions in cross-ex.

Of course, if your opponent walks into a debate with a copy of the Encyclopedia Britanica under his arm, opens up a laptop computer to take notes and interrupts you in the middle of your rebuttal, by all means protest. But if you don't like an argument or tactic your opponent is using, don't quote the rules or ask the judge to get involved. Make an argument, explain why it's wrong and trust the judge to agree with you.