THE LOST ART OF PERSUASION
AND THE PROBLEM OF THE SYMPATHETIC JUDGE

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Policy debate supporters often tout the activity as a superior form of education because it teaches participants how to see both sides of a question and therefore how to understand a different person's point of view. In a perfect world, this should translate into the ability to persuade a hostile audience of one's point, or at least to communicate in a civil and effective manner about controversial issues. However, the competitive structure of debate currently gives debaters no incentive to actually pitch their ideas to people who are unreceptive to them. When confronted with two interpretations of reality, a judge is likely to find more credible—and thus vote for—the interpretation that is most consistent with her pre-existing worldview.[1] Because this is true, a debater who wants to maximize competitive success is better off selecting judges who are already sympathetic to his arguments. Most debaters and coaches are aware of this fact, and thus seek to maximize competitive advantage by selecting sympathetic judges. As a result, even very successful debaters (and perhaps *especially* very successful debaters) run the risk of becoming preachers to their own choirs, and learning little about effective persuasion.

This Essay considers the pitfalls of selecting judges in order to maximize competitive success, and then proposes a package of solutions that can be implemented at various levels of the activity to address these concerns. The goal is not necessarily to promote the adoption of any one solution, but rather to spark some discussion about what is really good for debate as an activity and for the students who take part in it.[2]

I. Debaters Prefer Sympathetic Judges in Order to Maximize Competitive Advantage

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[1] There is some truly fascinating empirical work on this proposition done by a group of social scientists and law professors called the Cultural Cognition Project. The project is spearheaded by Dan Kahan and Donald Braman. A list of publications is available here: http://culturalcognition.net/index.php?option=content&task=view&id=88.

2 Before I continue with my analysis, I add a few necessary caveats. First, I have not studied this issue in any systematic fashion. My arguments are based on my own collegiate debate career, which was as a "varsity" debater at U.C. Berkeley from 1999–2004. My observations represent only the tiniest slice of the long history of the activity, and I acknowledge that my experiences may have been idiosyncratic, and that others who debated at different times, schools, and levels of the activity might see things very differently. In fact, my senior-year debate partner, Dan Shalmon, reminded me as I was writing this Essay that part of the reason that I saw things the way that I did was that I happen to be a liberal, and the debate community generally is quite liberal, and therefore inclined to be sympathetic to my ideas. To a debater like Dan, who was rather more conservative, judge adaptation was a vital skill that taught him not only how to persuade hostile audiences, but also forced him to examine his own ideas in some detail. Second, my arguments are not intended to prove that competition is anathema to education. On the contrary, I think that competitive debate serves many useful functions, but I do not mention those functions in this Essay for the sake of brevity, and also because I think they are generally well-known and accepted by participants in the activity. My thoughts are intended only as a counterpoint, and as part of an effort to start a discussion about whether we might keep many of the desirable aspects of competition while addressing some of its side effects. Third and finally, my views are my own, and do not represent the opinions of any person or organization other than myself.

Although I have not conducted a serious study of debaters' judge preferences, I firmly believe that debaters select judges primarily—and perhaps exclusively—in order to maximize their competitive advantage. A few observations make this conclusion probable.

First, it is likely that choosing sympathetic judges can be one very effective way to increase one's odds of winning a debate or a tournament. A quasi-controlled study from my own career might help demonstrate the point. My senior year (the 2003–2004 season), my partner Dan Shalmon and I debated in two forms of competitions: tournaments that had large fields of opponents and a mutual preference judging system that allowed us to pick our audience; and round robins against top-ranked competition with randomly assigned judging. Our results at these two types of competitions were radically different.[3]

Of the 6 tournaments we attended where the field contained round robin competition, we won 4 (chronologically: Kentucky, Wake Forest, West Georgia, and Northwestern),[4] and lost 2 (Harvard and the National Debate Tournament (NDT)), debating a total of 73 rounds. We won a total of 66 debates (excluding close-outs where we advanced, but did not debate) and lost 7, giving us a win percentage just over 90%. Debating the affirmative side of the resolution, we lost 7 tournament rounds, and had a win percentage of 82.5%. On the negative, where Dan was in charge, we won 100% of our tournament debates. At each of the 6 enumerated tournaments, we debated at least 2 rounds against round robin teams. We had a total of 20 tournament debates against round robin opponents, and we won 14 (70%) of those debates.[5]

In round robin competitions at Kentucky and Dartmouth, the numbers look quite different. We had a total of fourteen debates, and we won only 50% of them. Also, we lost more negative debates than affirmative ones (4 vs. 3).

It is odd that we should win 70% of our debates against round robin opponents in a tournament, but only 50% round robins.[6] While many differences between round robins and tournaments might contribute to this result (the intensity of the pace of competition, the level of preparation, etc.), the starkest difference is that in round robins teams do not have any control over the judging pool. I believe that this fact was relevant

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[3] All data is from Jon Bruschke's very helpful website, http://www.debateresults.com. The site does not have preliminary results for the NDT, which I have input from memory. In the preliminaries at the NDT, we debated four rounds against round robin teams—we won two and lost two of those debates.

[4] We also won the season opener tournament at Gonzaga University, but I have not included statistics from that tournament in any of these calculations because Dan and I were the only round robin team present at that competition.

[5] If we consider only the teams that were invited to the Dartmouth Round Robin (a smaller and arguably more elite group of teams than those invited to the Kentucky Round Robin) then our win percentage against those teams in tournament competition was 65% consisting of eleven wins and six losses.

[6] The only problem with this data is that it involves relatively small sample sizes. Had we won just one more round robin debate, our win percentage would have been 57% instead of 50%. A better study on this question would strive to examine a larger dataset. However, I have no reason to believe that any of our round robin decisions were outliers that compromise the validity of the data.

to our success rate because the majority of our round robin losses came at the hands of judges who we normally struck. And we did not strike these judges because we thought that they were incompetent. We struck them because in debates against our toughest competition, we believed that they would vote for us roughly 50% of the time or less, and other judges offered us better odds.

Conversations with my colleagues suggest that we were not the only team that sought to maximize our competitive advantage through judge selection. In my five years of debating, I never encountered a team that deliberately preferred a judge who they believed would be hostile to their favorite arguments. Nor did I ever hear of a team that struck judges at random. This applies even to teams that described themselves as more concerned with changing the activity than with competitive success. I remember the coach of one such program explaining to me that some people were simply beyond convincing, and there was no point in presenting a controversial position to an audience that was not ready to hear it. The metaphor was classic: "Better to preach to the choir than to a brick wall."

II. Arguing in Front of Sympathetic Judges Diminishes Debate's Educational Value

Throughout my debate career, and especially my senior year, I loved the fact that we could pick judges better than our opponents. I likened the skill to outwitting an opponent in poker—the way you know that somebody is a much better poker player than you is that he consistently beats you, and at the end of the day, all you can say is, "That guy is so lucky!" If this happens to you, it means that not only are you getting outplayed, but you are getting outplayed so badly that you don't even know how you're getting outplayed. I can't count the number of times that one of our opponents would rant after a loss to the tune of: "But Tejinder dropped everything, and they had no evidence on any of our arguments, and then he just got up and gave an all-new rebuttal and waved his arms around, and that was it!" I always smiled when I heard these tirades because I knew that my opponents had misdiagnosed the problem and were thus destined to keep losing to us—they thought that they lost the debate after my all-new rebuttal, when in reality they had lost when the pairings came out and we had our judge. It really was great fun.

But with the benefit of hindsight, I often wish that we had done things differently. Now that I have joined the "real world," where I can no longer pick my audience, I find that the task of persuasion is different, and much more challenging. I experience three principal difficulties, all of which stem from the fact that I debated under artificially easy conditions. I often have trouble: (1) understanding an opponent's perspective, (2) understanding the nuances of complicated questions, and (3) understanding my own limitations. Each of these problems deserves a brief discussion.

First, debating in front of a sympathetic audience doesn't teach the debater how to understand the perspective of a hostile audience. Persuasion is a craft. At its highest levels, it might even be an art. And perfecting it requires practice. Through practice, we get feedback on what works and what doesn't, and thereby gain the insight that we need in order to improve. Unfortunately, sympathetic judges frequently do not offer the sort of

challenging feedback that debaters need. After a debate is over and a judge is explaining her decision, she will typically explain the decision in terms of what she found persuasive, and ignore the question of what others might find persuasive. A sympathetic judge, therefore, will seldom offer useful insights into the mind of a hostile audience. The result is debaters who have a limited ability to understand diverse perspectives.

For example, I am not sure that I ever argued in front of an actual Republican in college debate (I probably did, but they were very secretive about it). Today, as a lawyer, I find that a fair number of attorneys, clients, and judges with whom I interact are card-carrying members of the G.O.P. And they are unreceptive to my lefty positions on major social issues like capital punishment, gun control, global warming, and so on. And the problem is not limited to Republicans—most of America probably falls somewhere to my right on many social issues. Because I had very little practice communicating across party lines, I now run a constant risk of being ineffective, or even offensive, to colleagues, clients, or judges whose approval I need in order to succeed. When the stakes are no longer limited to a debate round, but are raised up to the level of one's professional reputation, client's well-being, or ultimate political agenda, this is a costly limitation to have.

The second problem is that debating in front of a sympathetic audience doesn't encourage debaters to develop deep or broad understanding of topical issues. Every debater has an incentive to learn just enough about a topic to win a debate. Learning more than that trades off with time that the debater could spend on other matters. The problem with sympathetic judges is that they often require a lesser showing of knowledge to deliver a favorable competitive outcome. Debaters can get away with more unsupported assertions, less in-depth research, and more leaps in logic if the judge is predisposed to agree with the debater's conclusions.

The really tricky aspect of this problem is that it happens subconsciously. Probably no debaters sit with their coaches and ask, "How little do we have to learn about this topic?" And very few judges ever say after a debate, "It's obvious that you have no clue what you are talking about, but I like the cut of your jib, so you win anyway." What tends to happen instead is a much simpler feedback—a debater presents a sloppy argument, a sympathetic judge accepts it, and the debater goes home and asks, "Do I need to study this issue any further?" and concludes that the answer is "No" because the argument was good enough to win.

It is tempting to deny the existence of this problem. After all, aren't debaters generally much better informed than the general population? My experience indicates that they might be, but that they also get away with a lot of ill-informed bluster masquerading as knowledge. I frequently see debaters argue, and judges accept, the claim that if the global economy should stagnate, or even shrink, we will immediately witness renewed global armed conflict. I also see debaters successfully allege that the use of gendered pronouns in debate somehow authorizes genocidal extermination. These claims would be impossible to win without judges who are willing to accept them at face

value. And to the extent that they contain a kernel of truth, that kernel is undiscovered because judges are simply not challenging debaters to reveal it.

If put to the choice between advancing lame arguments in front of a sympathetic judge, or alternately going back to the drawing board to flesh the arguments out, rational debaters choose the former because it takes less effort and produces better competitive results. But debaters who leave the activity thinking that these arguments are solid have no clue for what awaits them in the broader world of politics, social science, or the law. Burdens of proof in the academy and in the professional world are higher than those in debate, and in order for debate to serve as a useful preparatory exercise, the standards for arguments simply have to go up.

The third problem is that debating in front of a sympathetic audience doesn't teach the debater how to cope with failure—and as a result, doesn't help the debater develop an accurate conception of his or her own strengths and weaknesses.[7] In addition to the gaps in understanding discussed above, debaters who lack experience in front of a hostile audience probably think that they are much better at persuasion than they actually are. I am certain that this was true for me. When I emerged from the cocoon of debate and started losing arguments because my new judges (law professors, fellow students, girls I met in bars) simply weren't convinced, I had one of the rudest awakenings of my young life. In essence, I was the opposite of the poker player who was getting beat and not knowing how—I was the player who had been cleaning up at my kitchen-table game, and had no clue why my techniques weren't working at the World Series. I feel fortunate that I was able to learn from the experience and develop a plan to address my weaknesses. But given the choice, I would much rather have had that epiphany five years earlier, and entered the next stage of my life prepared and confident, as opposed to ill-equipped and cocky.

III. Some Possible Solutions to the Problem of the Sympathetic Judge

At its core, the problem that I have identified is that competitive judge-selection takes an important challenge—that of communicating with a hostile audience—out of the equation for many debaters. I have hopefully made the case that this disserves debaters and ought to change. I think that there are several levels at which the activity could address this problem. However, no solution is without its drawbacks, and dealing with this problem will force some hard choices. I propose a few possible solutions here as a staring point for discussion.

First, tournaments could stop offering mutual preference judging. By replacing the system of mutual preference judging with a system whereby teams get a small

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[7] There is a decent book on this issue, called *Mindset* by Carol Dweck, who is a professor of Psychology at Stanford University. Dweck argues, correctly in my view, that people who are constantly trying to prove how capable they are do not put themselves in a position to learn from their mistakes, and also tend to systematically misestimate their ability, while people who are primarily concerned with learning and improvement learn faster and assess themselves more accurately. If you are looking to read more on this subject, I would recommend peer-reviewed scholarship over this book, but the book is ok too.

number of strikes, but the remainder of the pool is randomly assigned, tournaments could create competitive incentives for judge adaptation. If I am not mistaken, the Baylor tournament functioned this way during my career. The challenge with this model is that the large national tournaments have to do it in order for it to be successful. We always skipped Baylor—partly because it was in Waco, partly because most of our chief competition for the Copeland skipped it, and partly because we couldn't guarantee that we would win it because the judging pool was so small and so unpredictable. We would have been hard-pressed to skip Kentucky, Harvard, or Wake Forest no matter how they assigned their judging pools. I think that the directors of large national tournaments should strongly consider abolishing mutual preference judging in favor of a random judge-assignment process, subject only to a small number of strikes so that debaters and coaches could feel assured that they could strike members of the pool that they regard as incompetent or improperly motivated. I think that of all the ideas to deal with the problem of the sympathetic judge, this is the best one because it aligns competitive incentives with educational ones and therefore allows debaters to maximize both outcomes.

Second, coaches and their debaters could have a serious conversation about choosing judges with an eye toward the educational value of the activity, and not just competitive success. Prior to my senior year, my coach Dave Arnett started this conversation with me. I asked what he thought I ought to try to get out of my senior year, and Dave replied that I had done pretty well with critical theory and novel arguments, and if I wanted to, we could start working on developing my capability with more standard policy-type arguments. At the time, I didn't feel like taking up the challenge—I was too afraid of losing. I wish that Dave and I had had that conversation before my freshman year. And I wish that I'd had more guts before my senior year. The obvious problem with this solution is that it will force debaters to take a few losses. I doubt that anybody has it in them to deliberately place themselves at a competitive disadvantage like this, and ultimately, there may be compelling reasons not to take the competitive hit (for example, if a program's access to funding is dependant on competitive success, then it is probably important to win).

Third, judges could make a conscious effort to become more comprehensive in their critiques of debates, and more open-minded in their evaluation of arguments. Some ways for judges to do this would be to signal an intention to listen to more, different arguments in their judge philosophies, and also to make an effort to empathize with and analyze all the perspectives in a debate when giving criticism after the round. The downside to this proposal is that by pushing all judges toward the middle, we sacrifice the valuable experience of debating in front of extremists. This proposal fails to take advantage of the diversity of the judging pool, and that is a significant drawback—probably big enough to make this idea a non-starter.

All of these solutions appear somewhat unlikely, because for many people the system appears to work just fine. But I sincerely hope that some serious thinking on this topic will take place. I am not exaggerating when I say that my most significant regret about my debate career is that I won too much, learned too little, and deluded myself into

thinking that doing the former meant that I was excelling at the latter. Now that I have left the activity, I find that my wins mean little, but my ignorance means a lot. So I offer these words in the hope that others might do it better than me, and that debate might continue to serve a vital educational function in the years to come.