

Natural Value Hierarchies and Presumption: Merging Stipulated/Artificial Presumption with Natural/Psychological Presumption

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The role of theoretical positions such as presumption are as enigmatic in value-oriented debates today as they were some twelve years ago, when it was noted: "[i]n perhaps no area of academic debate is there more confusion than the role of presumption" (Vasilius). As the Cross Examination Debate Association (CEDA) has grown and struggled to distinguish itself in theory and practice from NDT, much has been written about the differences between policy and non-policy debate, but too little has been said about the notion of presumption.

Recent theoretical perspectives have posited somewhat contradictory views of presumption as either "stipulated" (Scott and Wynn; Trapp), "artificial" (Brydon), "psychological," (Matlon; Thomas and Fryar; Zeuschner and Hill), and/or "natural" (Brydon). More recently, Hill has argued that some of these terms may be merged into one multidimensional model of "holistic" presumption (Hill).

In many respects, these different views of theory have done more to confuse than enlighten students and debate competitors. The conflicting views, however, can be reconciled in one theoretical perspective of presumption that may be more meaningful for students. Like Hill, I, too, feel that these terms do not necessarily preclude each other. The holistic model he suggests may be strengthened if all competing schools of thought are merged and the element of value hierarchy is added.

In this essay, I argue that a holistic model of presumption in value debate is indeed possible, under the assumption that values may be identified and arranged in a "natural" societal framework or hierarchy, which the affirmative side to a value debate then would have the burden of meeting and upholding. Absent this finding, presumption against an affirmative value and favoring the natural value hierarchy will rest with the negative. In meeting this hierarchy, presumption for the value, although not the debate, would shift to the affirmative, thereby disposing of this issue out of the many issues for the critic to

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resolve. I will demonstrate the utility of this model by reviewing and merging the current theory on presumption, developing and justifying a new model, and providing a contemporaneous example of how this model might function in practice. For the latter, I will draw on my observations as one of the seven judges to the final round at the 1992 CEDA National Tournament.

Existing Views of Presumption Theory

Much of what has been written about presumption in value and/or non-policy debate usually has started with Richard Whately's now famous treatment of the subject, which some have labeled as a "rules based concept" (Hill 27). Under this view, presumption functioned to divide ground in argument, setting clear guidelines for burden of proof while also establishing procedures for resolving argumentative ties.

Stipulated/Artificial Presumption

Some of the confusion about presumption that students suffer today stems from the seemingly endless tendency to name and rename these perspectives on presumption. While earlier positions referred to them as "stipulated" (Trapp; Podgurski), later authors referred to this same position as "artificial" (Brydon). By whatever name, presumption is artificially stipulated in the sense it is assigned to one side or another in a debate conflict, based upon the filtering of a given analog. By way of comparison, one view of stipulated presumption is to filter it through the legal or judicial analog (Freely). In the law, a prosecutor or plaintiff's attorney has the burden of overcoming societal presumption of the innocence or nonculpability of the criminally or civilly accused defendant. This presumption of innocence, in our legal system, is artificially assigned to the defendant. Presumption of innocence in a court proceeding is desirable as it serves societal goals in preventing injustice and abuse of the accused, while also protecting the integrity of the very system that adjudicates the dispute through which such accusations are made.

Legislative stipulated presumption assumes that even value or non-policy debates still foster policy implications, justifying assignment of presumption in favor of the status quo, to which an implied policy would be applied (Young and Gaske). Policy debate traditionally has utilized this model in resolving problems with burdens of proof, presuming the correctness of the status quo in the absence of necessary and sufficient proof to the contrary (Freely).

Natural or Psychological Presumption

The problem with giving different labels or titles to the same concept continues with the alternative view of presumption. "Natural" presumption "reflects things as they are viewed in the world around us" (Tuman 92), while "psychological" presumption describes an "existing state of belief in an audience" (Brydon 16). By whatever name, this view proceeds from the claim that presumption does not need to be rules based or artificially assigned but may instead be determined by whatever values exist in the real world (Zeuschner and Hill), as perceived by the critic and the debaters in the round (Matlon). Based upon Sproule's reinterpretation of Whately's work, this has led theorists like Hill to conclude: "the locus of psychological presumption . . . is determined by the deference an auditor to a dispute chooses to grant" (23).

Criticism of the Existing Views

Stipulated presumption certainly advances value and/or non-policy questions to the degree it provides order to the debating process. With rules built out of whatever justifying analog (legal, policy or argumentative) comes the ability to render more objective, less subjective decisions, as well as the ability to resolve argumentative ties.

In this way, stipulated presumption can function effectively when policy questions are debated, by adherence to clear burdens of proof and prima-facie requirements for argument. Even in a non-policy debate of facts, stipulated presumption can function effectively (especially where validated by the legal and argumentative analog) to prove or disprove the existence of facts in issue. In our legal system, courts already employ this standard in cases where rules of evidence allow only "relevant" evidence at trial. Relevant evidence refers to evidence with probative value--that which tends to prove or disprove the existence of a fact at issue. Absent a showing of relevance, the evidence is presumptively invalid and, hence, disallowed.

The same may not be said, however, where non-policy questions of value are concerned. Here there is no reason to presume abstractly the correctness or relative significance of one value in relation to another anymore than there is justification to assign or stipulate presumption for defense of this value to one side or another in a debating context. In a value debate, none of the aforementioned analogs justify stipulating presumption to the negative or the affirmative.

Natural presumption answers this charge by providing clearer focus for value questions since it proceeds from the notion that values should be considered in the context in which they are viewed in society, as framed by the orientation of the judge and/or the debaters. Natural presumption falters, however, since it also requires a debater to know

or comprehend a judge's value system in a debating context, when there are no rules governing the objective resolution of the contest, much less any resolution of ties.

The Holistic Fusion at First Glance

Seizing upon this dilemma, Hill argues that presumption should be a holistic mix of the aforementioned models, both stipulated and natural. He claimed that a marriage of the two would offer the advantages of both without the disadvantages of either. In his calculus, the stipulated and psychological dimensions function as an integral unit with each dimension adding to the other. For example, the stipulated dimension provides the structural element of a debate through apportionment of argumentative ground and assignment of the burden of proof. The psychological dimension, on the other hand, provides the evaluative element of a debate by legitimizing and valuing screens that are used to assign weights to arguments made during the interaction (29). Hill justifies this fusion by arguing that his interpretation actually is consistent with Whately's original views of presumption, that the fusion ignores the disadvantages of either individual model, and that it best represents the function and interrelationship of both.

I am in complete agreement with Hill's view, but for an initial premise to his model. He suggests that the proper analog to the stipulated portion of his model is argumentative, based upon an earlier view advanced by Cronkhite. Here the party who initiates a claim "automatically surrenders presumption to the position he/she attacks, while assuming the burden of proving the position he/she advocates" (25). In a non-policy debate of factual issues, this initial premise makes good sense. If one were to try and prove the sky is purple when it is plainly blue, one should surrender presumption of the correctness of the new claim to that which is attacked. The sky would be presumed blue until proven purple. Where non-policy questions of value are concerned, however, it makes little sense to follow the argumentative analog to justify Hill's fusion of stipulated/psychological presumption. Why should the initiator of a value claim surrender presumption to the opposite view? If, for example, we debated the proposition "freedom of expression is more desirable than national security," why should the affirmative automatically concede presumption of the significance of the value (freedom of expression) over to the opposite (national security)? Why is one value presumptively more valid than any other?

Holistic Fusion: A Second Look

The answer to the question posed above can be made only if we add one more component to Hill's holistic mix--the concept of value hierarchies. In 1987, adopting

Milton Rokeach's distinctions between instrumental and terminal values (1979), I suggested that propositions of value might require four *prima-facie* burdens for the affirmative team; one of these burdens was the concept of prioritization and value hierarchy. Affirmative teams would be required to prioritize their designated value in a hierarchical scheme, relative to other values, in order to advance their claims about value arguments (Tuman).

Today this scheme matches well with Hill's holistic presumption since it provides the missing ingredient for value propositions. According to Rokeach's original position, *terminal* values referred to "desired endstates of existence," whereas, *instrumental* values referred to "desirable modes of conduct or behavior" (1979, 2-3). Perhaps more critically for our argument, Rokeach posited that the total number of values in the world, considering all cultures, is small and finite (1981). With minor variation, these same values may be found in all cultures--although perhaps called by different names. The distinguishing characteristic between societies and cultures, then, has less to do with what values a culture holds and more to do with the way it prioritizes them. Perelman and Olbrechts-Tyteca argue: "[v]alue hierarchies are, no doubt, more important to the structure of an argument than the actual values. Most values are indeed shared by a great number of particular audiences, and a particular audience is characterized less by which values it accepts than by the way it grades them" (81). If one thus proceeds from the assumption that values may be organized culturally and/or socially by reference to a hierarchy, it follows that a so-called "natural" hierarchy may be designated, depicting the perceived cultural preferences for values in rank of significance.

Applying this back to Hill's scheme, then, we may say that presumption in a value debate vests in the natural hierarchy of values. That is to say, one may presume the correctness of this hierarchy unless/until proof is advanced to reorder and differently prioritize the values. To return to the earlier question, "why should the affirmative surrender presumption of the value system to the negative?," the answer would be that an initiator of the value claim has the burden of demonstrating its congruence with the natural value hierarchy--the cultural/societal hierarchy of values as prioritized in the real world. Under the proposed revision of holistic presumption, it, therefore, would become the responsibility of the affirmative either to show how or why this hierarchy should be reprioritized with the affirmative team's selected value in the dominant position, or it would be possible for the affirmative team to demonstrate how its value actually fits the existing hierarchy. The latter move, under this scenario, then would shift presumption of the value and hierarchy to the affirmative, thereby disposing of the issue--but not the entire debate. The negative side to the debate would protect this hierarchy unless or until challenged by the affirmative. If the affirmative failed in this endeavor, or the debate about values and hierarchies ended in an evidentiary or argumentative tie, presumption

of the natural hierarchy would resolve this in favor of the negative--but only upon the issues of value and hierarchy.

Advantages of the Revised Holistic Model

The advantages of this model for presumption in value debate are numerous. First, it avoids the criticism of purely rules-based models (stipulated or artificial)--that they ignore societal or cultural values, as well as the differences between non-policy value questions, non-policy factual questions and policy questions. In this scenario, the question of presumption in value debate is dependent upon the very existence of societal or cultural value hierarchies. Second, this model avoids the claim against psychological presumption--that it is too vague and subjective. Societal or cultural preferences for values can be researched (Rokeach; Perelman and Olbrechts-Tyteca) with reference to polls, survey data, and so on, as well as numerous political, sociological, philosophical, historical and psychological studies into cultures, societies and their value systems, thus giving more precision to the identification of values and their hierarchies. Third, by assigning ground to the negative team and burdens to the affirmative team, the model avoids the charge against psychological presumption--that it either ignores rules and ground in debate or cavalierly adopts them (Brydon). Fourth, this model also avoids the fears of some that any status quo or existing institution's definition would be impossible to locate (Matlon, 1988), because here the negative is appealing to the audience's sense of status quo by defending what is demonstrated to be the prioritization of values in a culture or society. Fifth, and finally, this approach enhances Hill's union by providing specific procedure and *prima-facie* justification for merging these otherwise diverse schools of thought.

Example in Practice

In March of 1992 I was privileged to help judge the final round of the CEDA National Tournament, between Florida State University on the affirmative and Southwest Missouri State University on the negative, on the topic, "[r]esolved: that advertising degrades the quality of life in the United States." The affirmative approach to this resolution was viewed only by those present in the final round, but it may be seen on video to help follow my line of reasoning below.

Florida State defined advertising in the context of lawyer solicitation, that is, lawyers soliciting business, and gave a specific example, from Ohio, of the harms of solicitation--acts of degradation--to prove the topic true. Key in this debate was the affirmative articulation of "quality of life" as the evaluative terminology in the resolution.

As developed, quality of life became both the value and the filter or criteria for evaluating the debate. In effect, if quality of life was negatively affected in the Ohio example of lawyer solicitation, the resolution would be validated. Southwest Missouri State, absent any specific evidence about solicitation, countered that quality of life was an inappropriate value and/or criteria through which to filter the issues in the debate. Their preference was for life itself. Both teams then argued about which value--life, or quality of life--was of greater importance. The affirmative read evidence indicating that life without any quality of life was "painful" to endure. The negative countered that quality issues were irrelevant without life. In effect, if one is dead, quality of life does not matter.

Although neither team labeled it as such, both sides really were arguing about value hierarchies. There is no doubt they could have made this portion of the debate easier to understand and evaluate if they had identified these points as hierarchy questions; unfortunately, they did not do so. What could they have done to make this issue more clear?

If the aforementioned holistic scheme had been used, the affirmative could have built into their case the idea that quality of life ranks above other related values in our societal value hierarchy. For proof, they might have offered more evidence from sociologists, philosophers, political scientists and legal experts, as well as making reference to statistical data about cultural/societal preferences in this culture to show that this society/culture values quality of life above other values.

At this point in our hypothetical revision of the debate, the affirmative could have claimed that presumption of the value and hierarchy had shifted to their side as the initiators of the value claim. This would not end the debate, but it would strengthen support for the presumptive correctness of their interpretation of the resolution.

The negative then could have countered that the affirmative assumptions about natural hierarchy were incorrect and that life actually comes before quality of life in the natural prioritization scheme. They too could have cited experts, or perhaps stayed within a legal framework to validate their position. By way of example, the negative might have cited Thomas Hobbes for the idea that people are naturally self interested--and that they enter into "commonwealths" to avoid chaos from competing self-interest. Commonwealths in turn provide rules and laws we live by, to protect life and limited self-interest. Laws, then, protect life. By way of a more contemporaneous example, the negative team could have argued that our current system of commonwealth, that is, our own system of laws, prizes life above other values. Laws prohibiting murder and manslaughter mete out the worst punishment possible in our system. In most parts of our country, suicide is outlawed, as is "mercy killing," itself an implicit rejection of the affirmative position. If the law does not permit one to end her own life, or permit

helping another who suffers great pain to take her life, then clearly it may be asserted that our culture values life itself above the way we live our lives. By such reasoning, the negative could have claimed the natural hierarchy called for looking at the value of life before any other values.

Of course the affirmative team may have other answers to this in our revised position, but if this issue ended in a tie, we would say that presumption was stipulated to the negative defense of the natural hierarchy. This would have disposed of the issue, requiring those who evaluated the debate to determine if the affirmative examples of advertising and degradation filtered through the value of life.

Conclusion

Presumption in non-policy, value debate long has defied precise description and focus. The initial proposal to fuse stipulated and psychological presumption was a good first step. This union can be strengthened if we look from the perspective of values and natural value hierarchies. Defense of natural value hierarchies can be stipulated to the negative, while an affirmative may seek to show how they meet these hierarchies or rearrange them so as to overcome or actually shift presumption to the affirmative designated value. So doing will allow the advantages of a rules-based approach to value debate, while avoiding the inherent limitations of such an approach. Further, this revised perspective on presumption allows and fosters more creative consideration of values and value systems, both theoretical and as they are perceived to exist in the real world, thus making this more useful when debating non-policy questions of value.

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