

The Function of Presumption in Academic Debate

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The concept of presumption has figured prominently in the evolution of argumentation and debate theory. While widely believed to be one of the most important general concepts in argumentation and debate, there has been great controversy concerning the meaning of the term and how it should be applied in different argumentative contexts. This controversy recently has been extended to value-debate theory, where a number of different perspectives on presumption have been propounded (see, for example, Hill; Podgurski; Tuman; and Zeuschner and Hill).

In this essay, I argue that the view of presumption as a general component of what might be called a field-invariant argumentation and debate theory is misguided. Rather, presumption is best understood as driven by the purposes of different argument fields (see Rowland "The Influence"). When applied to debate, this purpose-centered approach suggests that presumption should not play a major role in debate theory.

The Function of Presumption

The easiest means of elucidating the argumentative function of presumption is to begin with the most common use of the term in our society--the presumption of innocence in a criminal trial. Why is there a presumption of innocence? The first answer might be that there is a strong logic behind protecting the rights of the accused, a logic so powerful that it has been recognized by courts and legislatures. That explains why the prosecution in a criminal trial must shoulder the burden of proof and prove beyond a reasonable doubt the guilt of the defendant.

The trouble with this answer is that we do not apply a presumption of innocence in all situations. In the civil context, for example, we do not presume that the defendant in a tort suit is innocent. In that context, we do not start out with a presumption for either side. Nor do we apply a presumption of innocence at the investigative stage in a criminal proceeding. If the police see a person behaving in a "suspicious" manner, they are likely to pick that person up, even though there could be any number of explanations for his or her actions. And it is easy to imagine particular criminal contexts in which the presumption of innocence essentially would not operate. In wartime, for instance,

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national security might require that we presume guilt, rather than innocence, to protect the greater good of society. In our personal lives, if we have been harassed in the past by a student and we start receiving harassing phone calls again, we are likely to presume that it is the same student. We certainly would not presume that the previous harasser was now innocent.

The obvious point is that the presumption of innocence is not a general principle of argumentation theory applicable to all instances in which someone is charged with wrong doing. It makes sense, in some instances, for the police to pick up someone behaving suspiciously and then check out the details. Their presumption of guilt is tied to protecting society. It also makes sense for the jury to presume that person is innocent in a criminal trial; we don't want to put an innocent person in jail. Similarly, it makes sense that we do not presume either side is correct in a tort suit. Some people are harmed by negligent action and deserve compensation; other people make false claims. There is no reason to give an argumentative benefit to either side.

The foregoing should make it clear that our most common uses of presumption are tied to particular purposes being served by argumentation in individual areas. Presumption, therefore, should not be viewed as a general concept within argumentation theory but rather as a field-dependent characteristic of a particular field. The presumption(s) found in any activity are in turn tied to the purposes of the activity.

In this view, presumption best can be thought of as a kind of rule-of-thumb standard for establishing argumentation burdens and deciding close cases in a particular field. All other things being equal, the prosecution should have to prove beyond a reasonable doubt that someone is guilty of a crime. The purposes of the law are better fulfilled by letting an innocent person go, if the evidence does not clearly support guilt, than by convicting that person. Presumptions are simply useful rules that, over time, we have found help us decide issues in a particular area. They are justified not based on theoretical ground but based on practical utility. Nicholas Rescher explains how a presumption applies in a specific instance: "A presumption indicates that in the absence of specific counterindications we are to accept how things 'as a rule' are taken as standard, and it places the burden of proof upon the adversary's side" (30). As such, presumptions are among the most useful argumentative devices to facilitate decision making in any argumentative endeavor.

Presumption and Academic Debate

The view of presumptions as useful, field-dependent, rule-of-thumb standards implies that presumption has little role to play in debate theory. I am not saying that presumptions should not inform real-world argument about public policy and values.

However, when we argue in the real world about policy or values, our purpose is to make good decisions. We want to choose the best program or product, or make a morally correct choice.

In debate, however, our purpose is not to make the best choice, but to facilitate the pedagogical function of the activity. Primarily, we are interested in a process that teaches a variety of argumentation skills. Presumption does not serve a useful function for achieving that purpose.

Why should we presume that the position of either the negative or the affirmative is correct on a given issue of substance of theory? The whole point of the debate process is to teach argument, by forcing students to advocate positions on both sides of a question. Pedagogically, there is no reason to presume that one side or the other is more likely to be right.

Moreover, application of a strong version of presumption theory to debate would be educationally counterproductive. In the evolution of policy debate, for instance, there was a time in which presumption served as a significant aid to the negative. This could mean that the affirmative would do a significantly better job of debating and win the preponderance of the evidence on most issues but still lose the debate. That result could only discourage affirmative debaters, create a perception of unfairness, and encourage wild affirmative strategy, results that clearly are pedagogically unfortunate.

In addition, debate about presumption takes away time from the substantive issues under consideration. The debate process works best when both sides clash on the topic-specific issues under dispute. If time is diverted to argument about extremely complex and ambiguous theoretical positions, the result may be to decrease the pedagogical value of the activity. This is especially true when the particular theoretical issue has relevance only within academic debate. One has to think quite creatively to imagine a reason that "counterwarrant" theory might be relevant in real life. A similar problem could develop in debate about presumption.

Thus, the best theory of presumption in academic debate is no theory. We should not presume prior to the debate that either side is right or wrong. Nor should a differential burden of proof be applied to one side or the other. Rather, both sides should be required to meet the same advocacy burdens.

In a particular instance, debaters might make arguments about general presumptions of the kind described by Rescher. For example, on a topic concerning the environment, one side or the other might argue that, all factors being equal, we should presume that nature should be protected. Notice, however, that this kind of particular presumption argument must be supported in the same way any other argument is supported. It is not based on a general theory of presumption. This example suggests that if presumption is important in a particular case, debaters should support that claim the way they support

any other claim. At this point, again, there is no need for a general theory of presumption within academic debate. It might be less confusing to refer to such specific presumptions as arguments about use of the correct decision rule.

Potential Objections to Eliminating Presumption as a Major Force in Debate

The initial reaction of many to the view that presumption should not play a useful role in academic debate theory undoubtedly will be that we need presumption to establish burden of proof and other procedural requirements. So it might be argued that absent a theory of presumption, we would not know which team needed to shoulder which burdens. Similarly, David Zarefsky has argued that presumption plays a key role in determining the advocacy requirements of the affirmative and negative.

A closer look, however, reveals that we can do without presumption in debate quite easily. First, both sides should shoulder a burden of proving all of their claims. There is no reason that the burden of proof should fall only on those advocating a resolution. Second, the requirements that must be met by the affirmative and negative are determined by the particular resolution under question. The affirmative has to advocate that resolution and the negative must oppose it. Eliminating presumption as a major theoretical term does not change those burdens. Finally, we do not need a theory of presumption to decide tie-debates. Personally, I have never witnessed a tie, although I have judged over a thousand tournament debates. But in the unlikely event that I do judge such a debate in the future, I am prepared to vote negative. At the same time, it would be just as rational for me to decide in advance that in case of a tie I will vote affirmative. Alternatively, a judge could decide such a situation randomly. The point is that ties do not happen often if at all, and we do not need a theory of presumption to deal with such problems.

Conclusion

In debate as in every other activity, we have tended to draw theoretical terms from related fields. Thus, the similarity between debate and legal and political argument led naturally to the application of a theory of presumption to debate practice. And that theory then evolved in a variety of ways in both policy and value argument.

The trouble with this approach, as I have argued on a number of occasions (see, for example, "Standards for Paradigm Evaluation"), is that the function of debate and the function of real-world argument are quite different. The function of argument in the world is to help us make wise and humane decisions. The function of argument in debate

is to teach our students how to make those decisions. In the real world, presumptions play a crucial role in providing useful rule-of-thumb standards for deciding among alternatives. In debate, however, we should not presume in advance that any substantive claim is more likely to be true than any other substantive claim. Rather, we should let the debaters debate about that claim. The pedagogical function of debate therefore is best met by eliminating presumption as a key theoretical concept and requiring that both the affirmative and negative meet a burden of proof on every issue under consideration.

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Using Presumption as a Decision Rule in Value Debate

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In 1828, Richard Whately introduced the word *presumption* into the vocabulary of rhetorical theory. He thought of presumption, primarily, as a sort of inventional tool: it represents the starting point of debate, and it indicates the lines of argument that may be presented by participants. Although Whately emphasized the role of presumption as an inventional tool, he also recognized a sense in which presumption can be used as a decision rule; that is, in some circumstances, presumption provides a standard by which to evaluate competing arguments.

Presumption has played a pivotal role in academic debate--particularly in American debating societies. In policy debate, presumption traditionally was granted to the negative side when the negative defended the status quo. The affirmative, on the other hand, carried the burden of overturning presumption. Although innovations such as comparative-advantage cases render presumption less important (Vasilius 34), in traditional policy debates, if the affirmative fails to establish particular arguments, then the negative must win the debate by default. In such debates, presumption gives debaters a clear sense of what types of arguments they must make, and it also provides judges with a standard for evaluating the arguments and rendering a decision. Other formulations of presumption have come out of the arena of academic debate. Zarefsky, for example, argues that presumption should be granted to the negative, that is, against the resolution, rather than in favor of the status quo (5).

With the advent of non-policy, including value, topics in academic debate came questions about the role of presumption in such debates. As presumption has been adapted to academic debate, both as an inventional tool and as a decision rule, these scholars have made major modifications to the concept. This essay will show that such modifications have done serious damage to Whately's original concept by attempting to make presumption do things that it cannot do; presumption rarely, if ever, can operate as a decision rule in value debate. Further, some modifications result in confusion about the role of presumption. To support this thesis, I begin by examining how Whately

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