On Being "Prima Facie" -- An Application to Non-Policy Argument

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Although there is sometimes difficulty in deciding whether or not a given set of arguments constitutes a prima facie case in policy debate, most theorists and practitioners have no great problem deciding the components of a prima facie policy case. Yet, in non-policy debate the decision is not only difficult, it is usually not even considered. There is almost no discussion of the concept of being "prima facie" in non-policy argument theory. Furthermore, there are very few attempts to argue the concept in CEDA debate.

Starting Points

I propose that the concept of prima facie construction is both possible and desirable for non-policy resolutions. The starting points for the concept of prima facie construction are the same for policy and non-policy debate. The a priori question about argument is: "Should we argue?" If the answer is yes, then a prima facie case must be put forth to justify the activity of arguing. Furthermore, such a case must be established immediately. This demand is explicit in most definitions of prima facie.

Both of these ideas are clear in the concepts from legal decision making where much of argumentation theory is drawn. For example, Black's Law Dictionary defines a prima facie case as one "such as will prevail until contradicted and overcome by other evidence." Black's also defines prima facie as at first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure.[1]

Definition of Prima Facie

Austin Freeley has defined prima facie construction in language

similar to the legal definitions: "The first requirement of any affirmative -- whether debating a policy or value proposition -- is that it must present a _prima facie_ case -- one that in itself provides good and sufficient reason for adopting the proposition. Moreover, it must be both structurally and qualitatively strong enough to be logically self-sufficient. It must convince a reasonable and prudent person and stand on its own merits until or unless it is refuted."[2]

Of course, the real test of the soundness of any theoretical construct is its usefulness. The usefulness of the prima facie concept has been clear in policy debate. For example, in policy debate the prima facie concept usually is interpreted to mean that the first affirmative speech must contain reasons which outline the needs or advantages of the policy, the inabilities of the present system and the effectiveness of the new policy. These specific burdens of proof have come to mean what is usually considered the "good and sufficient reasons" for adopting a policy proposition.

An Application to Non-Policy Debate

The question now becomes how to interpret prima facie concepts in non-policy debate. If these concepts are useful in the courts which decide non-policy questions, they certainly should have potential for non-policy intercollegiate debates. Perhaps the method of application can be learned from the legal concepts. The nature of legal argument would employ a common set of procedures and principles for resolving disputes. This would imply that there might be some common burdens that all non-policy affirmative cases should meet.

On the other hand, _Black's_ also defines a prima facie case as follows: "A prima facie case consists of sufficient evidence in the type of case to get plaintiff past a motion for directed verdict in a jury case or motion

to dismiss in a nonjury case." [3] The words "type of case" suggests that the burdens might be somewhat different depending upon the kinds of arguments. If this concept is applied to non-policy debate, it would suggest that specific burdens might also be determined by the kind of proposition or topic being debate.

With these starting points in mind I suggest that prima facie burdens might be easily derived for non-policy propositions. First, a common principle for all non-policy topics is the need for a method of measurement. If the traditional classification of topics is assumed (fact, value and policy), the question of measurement is clear for a question of fact or value. For example, imagine advocates are debating a question of historical fact, such as Resolved, That Lee Harvey Oswald killed John F. Kennedy. The measurement question becomes what is sufficient evidence to declare this assertion a fact. Is circumstantial evidence sufficient? If so, what specific types of circumstantial evidence and how much evidence are necessary? In a legal situation, there would be a specific set of rules and principles to answer such questions. However, in any setting the measurement question would have to be decided in order to resolve the question.

If the question is one of value, then the measurement question is usually a task of evaluation. For example, if debaters argued the 1982 fall CEDA topic, Resolved: That a unilateral nuclear freeze by the United States on nuclear weapons production and development would be desirable, it would be necessary to decide what was "desirable."

Debaters most frequently attempt to measure or evaluate by defining the key term(s) in the resolution. Several writers have indicated that value propositions, in particular, require the definition of key terms as prerequisites of issue development. George Ziegelmueller and Charles Dause

write: "It is impossible to establish a judgment without first determining the aspects of that judgment."[4] If this is correct, then it should be an a prior consideration and a requirement of prima facie construction.

The most effective kinds of definitions are ones which contain explicit criteria. For example, if the term "desirable" was defined with a dictionary definition such as "worthwhile," then no method of measurement or evaluation would have been supplied. On the other hand, if the same term were defined conceptually in terms of cost-benefits analysis and a goal or value of disarmament, then the question of measurement or evaluation is much easier to resolve. Without a method of measurement or evaluation, then there is no way to debate the resolution in a meaningful way. Thus, there is no reason for the debate to proceed unless there is a clear method of measurement.

Of course, there both can and should be substantial debate about what are appropriate and good criteria. For example, several theorists might object to the use of such criteria as those in the example above because they are drawn from policy debate.[5] However, the necessity of a very specific definition or clear criteria seems almost indisputable.

A second possible prima facie requirement might be specific requirements depending upon the type of proposition being argued. For example, as indicated above when debating a proposition of policy, there is an expectation that need(s) or advantage(s), inherency and solvency should be developed as prima facie requirements.

A problem arises in specifying what those requirements are in resolutions of fact and value. However, this problem can be partially solved with a clearer classification system for resolutions. Several writers have proposed systems of classifying propositions that might be

more productively used to specify prima facie burdens. [6] Charles Wilbanks and I have proposed an extensive re-classification and typology of both policy and non-policy resolutions.[7] If this system were used, then it would be possible to specify prima facie burdens for the different kinds of propositions. For instance, one of the kinds of topics we define is a proposition of relational inference. A proposition of relational inference is one that deals with relationships which usually are causal in nature. For example, the topic, Resolved: That television is harmful to children, is a relational inference. Construction of a prima facie case on a relational inference would require that the causal relationship be demonstrated in the first affirmative presentation. [8] Depending upon the classification system of propositions selected, such specific prima facie requirements might be specified.

Guidelines for Debaters and Judges

How should debaters and judges treat the concept of prima facie construction in non-policy competition? First, this essay has suggested that the first affirmative constructive speech must define the key evaluative term of the topic in a clear and specific manner. If this is not done, there really is no reason for the debate to continue. Indeed, to continue the debate without a clear definition might even be counterproductive to an intelligent discussion of the topic.

Second, it is clear that this is the affirmative's responsibility and constitutes a significant burden. The affirmative clearly has the obligation to advance the resolution and this essay has argued that the resolution cannot be advanced without first defining the key evaluative term in a clear and precise manner. It should be noted that I am suggesting this constitutes a burden and not necessarily the burden of proof. I believe that presumption might still be argued as resting with

the affirmative in some situations.

Third, I suggest that prima facie construction should be argued and viewed as arguable. These views are not suggested as either absolute, inflexible or final. Indeed, there is much to be developed. I would hope that debaters would attempt to construct and argue other prima facie requirements that should be met by different kinds of cases on different types of propositions. These ideas are promulgated not to limit but to expand debate and hopefully make it more educational.

Advantages of a Prima Facie Concept in Non-Policy Debate

What are the advantages of such a development of the prima facie concept for non-policy debate? First, the use of the concept of prima facie construction for non-policy debate would lead to clearer divisions of burdens and responsibilities. At present, without a concept of prima facie construction, almost every argumentative concept is open for contention. Prima facie requirements would tend to place a specific burden of proof consistently on the affirmative.

Second, prima facie requirements would hopefully also encourage a consensus on a new classification system of propositions. If non-policy debate continues to be as significant and widespread as it currently is, then a new system of classifying resoltuions would probably be desirable. Using the traditional face-value-policy typology, there is a tendency to classify all non-policy topics as value resolutions. Although this might be appropriate given the typology, there are clearly many different kinds of topics being debated -- even if they should be classified as different kinds of value questions.

Third, the development and use of a concept of prima facie construction would also have a heuristic value. Theory construction, I believe, should not be isolated from practice. This is based on the belief that theory can

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be and should be tested and developed by debaters in competition. The construction of the most coherent and worthwhile argument concepts and theory can be concurrently developed with the practice of non-policy debate. Certainly, debaters can benefit educationally by participating in the theory building process.

Notes

[1] Black's Law Dictionary, 5th ed. (St. Paul, MN: West Publishing, 1979), p. 1071.

[2] Austin Freeley, Argumentation and Debate: Critical Thinking for Reasoned Decision Making, 6th ed. (Belmont, CA: Wadsworth, Inc., 1986), p. 166.

[3] Black's, p. 1071.

[4] George Ziegelmueller and Charles Dause, Argumentation: Inquiry and Advocacy, (Englewood Cliffs, NJ: Prentice Hall, 1975), p. 169.

[5] See: Ronald Matlon, "Propositions of Value: An Inquiry into Issue Analysis and the Locus of Presumption," in Dimensions of Argument: Proceedings of the Second Summer Conference on Argumentation, ed. George Ziegelmueller and Jack Rhodes (Annandale, VA: Speech Communication Association, 1981), p. 497.

[6] See: David Zarefsky, "Criteria for Evaluating Non-Policy Argument," in Perspectives on Non-Policy Argument, ed. Don Brownlee (Cross Examination Debate Association, 1980), pp. 9-16 and Glenn Mills, "Analysis: A Crucial Process," in Reason in Controversy: An Introduction to General Argumentation (Boston: Allyn and Bacon, 1964),pp. 53-74.

[7] Russell T. Church and Charles Wilbanks, Values and Policies in Controversy: An Introduction to Argumentation and Debate (Scottsdale, AZ: Gorsuch Scarisbrick, 1986),pp. 31-46.

[8] Church and Wilbanks, p. 160.