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Archbishop Whately and the Concept of Presumption: Lessons for Non-policy Debate

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With the recent Clarence Thomas nomination hearings, the American public probably heard a great deal about the concepts of burden of proof and presumption. Senators debated the aptness of the judicial metaphor, wondered about the effect of public opinion on presumption in the controversy, and desperately sought to impose upon the opposing faction onerous burdens before the charges of sexual harassment could be accepted or rejected. Rarely have such technical points of argument surfaced in such an important and visible way in public debate. What those hearings demonstrated, among other things, was the continuing vitality and theoretical importance of the concepts of presumption and burden of proof articulated by Archbishop Whately one-hundred-and-fifty years ago. While policy debate seems to have a well-developed sense of how presumption operates as a part of both debate strategy and for the decision calculus for each round, in non-policy debate, that understanding is neither as clear nor as fully realized.

My interest in this area stems in part from my frustration with debates in which presumption seems to be a prize awarded to the team who claims it first or the team who offers even the most flimsy justification for its assignment. One of the attractions of this activity is that students and teachers can be active participants in the creation and application of debate theory and the subsequent alterations of debate practice. We clearly have not done enough to teach our students to think through the special challenges offered by non-policy debate to the application of presumption. The purpose of this article, therefore, is to retrace some of the ground covered by those who have previously considered this concept and to look specifically to the work we most often credit with providing the theoretical foundation for modern conceptions of presumption--Richard Whately's *The Elements of Rhetoric*. Review of Whately's contributions suggests ways in which debaters can operationalize some of Whately's ideas in the realm of non-policy debate.

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Whately and Presumption

As one of the first works devoted primarily to rhetoric as the study of argument, Whately's text provides students of argument a rich insight, not only to the principles of argumentation but also to the concepts of presumption and burden of proof. Whately's writings on presumption are best termed "evolutionary" in the sense that they evolved over the various editions of *The Elements of Rhetoric*. The concept was entirely absent from the first two editions of that work which first appeared in 1828. In the third edition, published in 1830, we find Whately's nascent thoughts on presumption. Over the next sixteen years, through four revisions, his treatment of burden of proof and presumption grows from eighteen paragraphs to fifty-three paragraphs that comprise a separate subsection. For Whately, revision and the publication of a new edition nearly always meant addition; his treatment of presumption therefore is developed most fully in the last edition which appeared in 1846.

J. Michael Sproule has done our field an enormous service with his 1976 essay in which he traced the development of Whately's theory of presumption through the various editions of *The Elements of Rhetoric*. Sproule was able to find each of the seven editions and trace how Whately added to his discussion of presumption and burden of proof and, more importantly, how that treatment changed over time. Three conclusions stand out from this analysis of the evolution of Whately's treatment of presumption.

First, the traditional, legal conception of presumption was the earliest version of Whately's theory of presumption. Whately's explicit use of legal terminology and reference to "the Law" clearly indicates that the first incarnation of presumption is drawn directly from the legal concept of presumption of innocence. In this early conception, presumption is a stipulated, monolithic concept.

> According to the most correct use of the term, a "Presumption" in favour of any supposition, means not (as has been erroneously imagined) a preponderance of probability in its favour, but, such a preoccupation of the ground, as implies that it must stand good till some sufficient reason is adduced against it; in short, that the Burden of proof lies on the side of him who would dispute it (112).

This legal presumption, or as Professor Hill has labeled it, the *stipulated* dimension of presumption, is probably the most familiar to us. It is used to justify why affirmative teams speak first, why negative teams win debates that end in a tie and, most importantly, why affirmative teams assume the burden of proof and negative teams maintain presumption. It is also, however, only part of the story.

The second dimension of Whately's theory of presumption is present in the earliest conception but often discounted in contemporary textbook treatments. Whately acknowledges that "a Presumption may be rebutted by an opposite Presumption, so as to shift the Burden of proof to the other side" (124). Suddenly, the stipulated, monolithic conception of presumption seems a little less so. If a presumption may be rebutted or transferred, it must be that other bases exist from which presumptions are generated. Whately uses the example of the removal of a restriction as possibly receiving presumption. Even though the removal of a restriction would be a change in an existing institution, the natural presumption (at least for Whately) against restrictions may outweigh, and hence reverse, presumption in that debate. In the earlier editions of *The Elements of Rhetoric*, those bases are not explored; later editions, however, provide a plethora of possible foundations from which arguments for gaining presumption might be built.

The final feature of Whately's theory of presumption and perhaps the most significant for the purposes of innovation and theoretical advancement is what Sproule referred to as the psychological dimension of presumption. A psychological presumption is one that might be based on prevailing public opinions or values. If either side in a debate is free to claim presumption and to impose the burden of proof upon the opponent, then advocates must understand how those burdens and advantages may be assigned. Over the last ten years of Whately's active revision of his work, he greatly expanded the possible bases for determining presumption. The fifth edition features, for the first time, the notion that presumption may vary according to audience membership and that the legal or logically objective assignment of presumption may be overturned by a psychological presumption attending to things novel (Sproule 120). In the seventh edition, some additional bases of presumption were added as well as a lengthy discussion of the notion of deference in the location of presumption. Whately writes:

> The person, Body, or book, in favour of whose decisions there is a certain Presumption, is said to have, so far, "Authority"; in the strict sense of the word. And a recognition of this kind of Authority--an habitual Presumption in favour of such a one's decision or opinions--is usually called "Deference" (118).

Intrinsic to such a psychological dimension is the notion that presumption may change from debate to debate, that presumption is not automatically assigned prior to a debate, that such a presumption is rebuttable if the opponents can indict the authority involved and, finally, a recognition that Whately is giving us a truly audience-based and, hence, rhetorical theory of presumption. Sproule correctly argues that argument

textbooks which focus exclusively or even primarily on the legal or stipulative formulation of presumption are doing a disservice to students. He argues that a psychological conception of presumption may encompass a legal one, but a narrow legal construction cannot easily accommodate psychological aspects (125). More importantly, this psychological or rhetorical interpretation is far more useful in its application to public controversy and, for our purposes, to non-policy debate.

Utilizing Presumption Arguments in Non-policy Debate

In the remainder of this article, I suggest a number of ways to incorporate the explicit discussion of presumption into contemporary non-policy debate rounds.

Burden of Proof, Presumption, and the Prima Facie Case

Despite the preceding analysis concerning psychological presumptions, affirmative teams, being responsible for proving a proposition true, likely will assume some measure of burden of proof. Whately believed that determining the assignment and strength of presumption and burden of proof in each controversy was extremely important. He noted that "though it may often be expedient to bring forward more proofs than can be fairly demanded of you, it is always desirable, when this is the case, that it should be known, and that the strength of the cause should be estimated accordingly" (112). In a sense, many affirmative teams already engage in this sort of analysis under the often-used heading of "resolutional analysis" or "affirmative burdens." Knowing exactly how the affirmative team intends to fulfill its burden of proof, and what that burden of proof entails, allows both an opponent and a judge the possibility of common ground for a decision.

In policy debate, those burdens often are operationalized by reference to the stock issues; however, the situation in non-policy debate in somewhat more fluid. Many would argue that an affirmative team must meet stock issues, but fewer would agree as to exactly what those stock issues might entail. By engaging in the specific exercise of outlining an affirmative team's intent for meeting its burden of proof, we allow for superior clash by the negative team and an assessment as to whether the burden it has assumed is a reasonable one. Negative teams, of course, may want to challenge affirmative assessments of their burden of proof while at the same time defining the strength of the presumption that the negative retains. If, for instance, the affirmative team defends a value that seems to be outside of the constellation of values normally embraced by a culture, a negative team might utilize Whately in explaining that presumption lies against prevailing public opinion and that, therefore, the value being

advocated by the affirmative team functions to bolster the negative's presumption in the round.

Presumption and the Evaluation of Evidence

Explaining to those new to debate how to approach the criticism of an opposing team's sources is not an easy task. If framed within an explanation of presumption, however, it may be easier for novices to understand why, absent a specific, relevant attack on a source, judges generally accept evidence read by teams in a debate. In his discussion of deference, Whately notes that "one has a deference for his physician, in questions of medicine; and for his bailiff [a kind of farm manager], in questions of farming; but not vice versa. And accordingly, Deference may be misplaced in respect of the subject, as well as of the person" (121). The rationale for full source citations and specific qualifications presented in a debate round derives as much from presumption as it does from the standards for evaluating sources derived over the years from various argument textbooks. Indeed, the argument could be made that either side gains a measure of presumption in a debate by providing qualifications for their sources.

Additionally, Whately suggests that decisions of a group might be accorded a greater deference that those of an individual. One can imagine a debater claiming presumption for a report from the Government Accounting Office or a recently published study of the National Research Council-National Academy of Sciences on these grounds. Whately cautions, however, that the nature of group-decision making, the give and take of arguing for a final position and the compromise inherent in that process may make such evidence uniquely suspect. Again, the students in the round will have to construct an argument skillfully for presumption based on the type of group and its record of public credibility. Whately warns against automatic conclusions on this matter: "Anyone therefore who should think himself bound in due deference for the collective wisdom of some august Assembly, to interpret any joint-composition of it, exactly as he would that of a respectable individual . . . would be often greatly misled" (124).

Presumption and Argument Strategy

The entire notion of Whatelian deference suggests a number of possible standards for the acceptability of evidence sources and credibility, but it also speaks directly to the design of argumentative strategies in debate. If presumption in fact does rest against the team making a charge against a status quo program such as affirmative action programs for college admissions, then negative teams need to recognize that fact as an argumentative resource. Whately uses a fortress metaphor to make this point:

A body of troops may be perfectly adequate to the defence of a fortress against attack that may be made on it; and yet, if, ignorant of the advantage they possess, they sally forth into the open field to encounter the enemy, they may suffer a repulse. At any rate, even if strong enough to act on the offensive, they ought still to keep the possession of their fortress. In like manner, if you have the "Presumption" on your side, and can but refute all the arguments brought against you, you have, for the present at least, gained a victory: but if you abandon this position, by suffering this Presumption to be forgotten, which is in fact leaving out one of, perhaps, your strongest arguments, you may appear to be making a feeble attack, instead of a triumphant defense (113-14).

Recognizing the strategic advantages that might accrue to the team defending presumption in a given debate round suggests that those teams who pursue this line of inquiry might be rewarded with a competitive advantage. The justification of decision rules and *a priori* voting issues based on theories of presumption seem to be potentially fruitful avenues of discussion.

Conclusion

A more thorough reading of Whately on presumption can give teams a number of important issues to advance and can have a significant strategic impact on how a judge makes a decision in a debate. Some may argue that more attention to arguments like presumption and burden of proof in a debate simply presents us with another tedious procedural argument to evaluate. I would suggest that evaluating presumption positions is more interesting than listening to definitions of common-sense terms so often heard in intercollegiate debates. If we could agree that operational definitions are appropriate and that debaters need only argue topicality when an affirmative case is truly abusive, we might have more time in each round to explore the issue of presumption.

We need to expose our students to *all* of Whately's writing on presumption and not just the paragraph on legal presumption so commonly included in argumentation textbooks. In so doing, we recover the complete writings of an important figure in the history of argument theory and also reassert the importance of rhetorical theory in the conduct of public argument.

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