

WHATELY ON PRESUMPTION AND BURDEN OF PROOF

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In his Elements of Rhetoric, Richard Whately presents principles concerning presumption and burden of proof which continue to influence argumentation theorists. Rather than furnishing a practical tool to enable the advocate and defender to advance their causes, Whately's system actually bears evidence of being an arbitrarily conceived system for justifying his own religious beliefs. This paper will initially outline Whately's basic position on presumption and burden of proof, and then will focus on the elements that indicate the arbitrary nature of the system.

At the onset of a case, Whately declares, one should always decide on which side lies the presumption and which side bears the burden of proof. Presumption is "such a pre-occupation 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."¹ If a person has the presumption on his side, and can but refute all the arguments brought against his case, he has gained at least a temporary victory.² To illustrate his definition, Whately reminds the reader that every man is to be considered innocent until his guilt has been established. The burden of proof would rest with he who doubts his innocence. Likewise, Whately argues, there is a presumption in favor of any individuals in actual possession of property. Although they may not be the rightful owners, they will retain the property until some claim against them has been established.³

Whately continues his list of some presumptions. A presumption rests in favor of any existing institution; according to Whately, no one need defend such an institution until some argument be brought against it. Finally, there is a presumption against anything contrary to the prevailing opinion.⁴

At this point, Whately, a bishop in the Church of England, pauses to present some applications of his principles to Christianity. When the gospel was first preached, a presumption rested against it. The burden of proof lay with he who claimed to be the deliverer of mankind. After the establishment of Christianity, the situation, according to Whately, reversed itself. The presumption now rested with Christianity and the burden of proof lay with he who would bring any charges against it. In referring to the Reformation, Whately contends that its authors had a responsibility to present reasons for every change which was made; however, they were not bound to give any causes for retaining what was left unaltered, as the presumption rested with that which was retained.⁵

In further discussing presumption, Whately contends that "a presumption may be rebutted by an opposite presumption, so as to shift the burden of proof to the other side." His illustration of this principle supposes an argument against some existing institution; under such a situation, the advocate would be charged with the burden of proof and the presumption would rest with his opponent. It would be possible, contends Whately, to argue that every type of restriction is a form of evil; under such a situation, the presumption would shift to the side of the person proposing a change, and the burden of proof would rest with the one defending the existing institution.⁶

One should not conclude, Whately reasons, that any advantage necessarily rests with the one in whose favor there is a presumption; often, the opposite would be true. Whately illustrates his point by mentioning people who have taken the principles of their religious faith for granted, without being stimulated to find reasons for the profession of that faith. When believers are unable to repel objections, they may become skeptics.⁷

Several illustrations point out the way in which Whately's system bears evidence of having been constructed to prove his own religious propositions. For instance, Whately does perceive that presumption may vary with different audiences in different occasions:

It should be also remarked under this head, that in any one question the presumption will often be found to lie on different sides, in respect of different parties. E.g., in the question between a member of the Church of England, and a Presbyterian, or member of any other church, on which side does the presumption lie? Evidently, to each, in favor of the religious community to which he at present belongs. He is not to separate from the church of which he is a member, without having some sufficient reason to allege.⁸

The reason for presumption's varying is not, however, because of the varying beliefs or attitudes of the audience. Rather, Whately's arbitrarily constructed rule is that "He is not to separate from the church of which he is a member, without having some sufficient reason to allege." Far from considering audience composition and sentiment in determining presumption, Whately goes so far as to suggest that it is a point of great importance

to "clearly point out to the hearer" on which side the presumption lies. ⁹ The listener is not given the choice of furnishing his own criteria as to what will be necessary in his case for him to believe or disbelieve a proposition. Rather, he is given a set of rules and is expected to award his consent to the one who best uses the rules.

A second instance of Whately's arbitrary rhetoric shows Whately declining the challenge to submit evidences for the case of Christianity; rather, he contents himself with merely meeting the attacks brought against it. ¹⁰ Whately does recognize some value ¹¹ in constructing an affirmative position, but he is careful to maintain that such is not his duty. Somehow he is under the mistaken assumption that faith may be produced in a skeptic simply by overcoming objections.

Whately furthermore uses fallacious reasoning as he applies his rhetorical principles to his religious beliefs. He is very careful to contend that it is not necessary for the one who practices infant baptism to show authority for the practice; the burden of proof rests with the one who denies it. Again, using the same reasoning, Whately contends that it is not necessary for him to prove the case of the Episcopacy; the burden of proof rests with the one who denies its authority. As he approaches the subject of tradition, however, this type of reasoning is abandoned. Consistency would demand that he should have reasoned that it would not be necessary for the believer in the authority of tradition to prove his case, but that the burden of proof would rest with the one who denies it; this would have placed the burden of proof upon Whately and his colleagues.

In order to remedy such a situation, Whately adopts this reasoning: A presumption is in favor of commands and prohibitions which the Lord or his apostles delivered; the burden of proof would rest with he who would introduce some additional article of faith. ¹² Using this reasoning, Whately can ignore the fact that tradition was used by many theologians as an authoritative source from the seventh century onward. ¹³ Ignoring the age of the practice of tradition, Whately dogmatically declares that a presumption is in favor of his beliefs. Both methods of reasoning cannot be considered equally valid, as their applications contradict each other. If the latter form of reasoning had been applied to the first illustrations (infant baptism, the Episcopacy), then the burden of proof would have shifted to the adherents of Whately's beliefs. For instance, no command is given by Christ or the apostles favoring infant baptism; the burden of proof would rest with the one who introduces it. This apparent inconsistency -- using completely antithetical types of reasoning to establish different parts of a religious system -- is one of the clearest evidences that Whately's system is arbitrary rather than functional.

Any principles concerning presumption and burden of proof should be constructed in light of a careful audience analysis. The speaker, rather than giving an audience an arbitrarily constructed system of rules telling them how they should judge whether or not an advocate has carried his case, should instead analyze his audience to determine where the presumption and burden of proof rest in that particular audience.

Furthermore, a burden of proof may exist on both sides of some

questions in dispute. An advocate with the presumption in his favor may win a temporary "victory" if he simply repels his opponent's objections. A responsibility rests, however, with the advocate to instruct his audience concerning his beliefs, so that there may exist solid foundations for their sentiments. If such is not done, the members of an audience, in a different situation, may be unable to justify their beliefs and may give them up.

In summary, Whately's rhetorical principles concerning presumption and burden of proof bear evidences of having been arbitrarily constructed to justify his own religious beliefs. A more functional rhetorical system would have placed the emphasis upon audience analysis.

NOTES

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- 1 Richard Whately, Elements of Rhetoric (London: B. Fellowes, 1846), p. 112.
- 2 Ibid., p. 113.
- 3 Ibid., pp. 112-113.
- 4 Ibid., pp. 114-115.
- 5 Ibid., pp. 116-117.
- 6 Ibid., pp. 124-125.
- 7 Ibid., pp. 129-130.
- 8 Ibid., p. 118.
- 9 Ibid., p. 112.
- 10 Ibid., p. 116.
- 11 Ibid., pp. 129-131
- 12 Ibid., pp. 117-118.
- 13 Arthur Cushman McGiffert, A History of Christian Thought (New York: Charles Scribner's Sons, 1933), V, 160.