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COMMENTS ON CHRISTOPHER M. THOMSON'S, "ON THE BURDENS OF PROOF IN ORDINARY LANGUAGE ARGUMENTATION"

Fred Kauffeld
Communication Arts
Edgewood College
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As a student in the traditions of rhetoric, it is a pleasure to find myself commenting on a paper produced by a student of philosophy who has drawn on work in my discipline. It is reassuring to find that we broadly agree that burdens of proof have critically important functions in ordinary language argumentation and, also, that received concepts of the burden of proof are badly in need of clarification. Indeed, whatever doubts I have about Mr. Thomson's paper grow out of a belief that the confusion in inherited conceptions of the burden of proof runs even deeper than he seems to recognize.

In this response I want to sketch several areas in which I think the ideas rhetoricians have put forward about the burden of proof are confused or mistaken. I think this contribution may be helpful because some of the views which I suspect are mistaken seem to have influenced Mr. Thomson's thoughts about the burden of proof. My ruminations will bear on three topics from Thomson's paper: first, his conception of the rhetorical burden of proof; second, the interpretation of Whately on which Thomson relies; and, third, his notion of the verbal burden of proof.

By way of approach to Thomson's view of the "rhetorical burden of proof," I should like to point out a critically unfortunate equivocation in the scholarly use of the term 'burden of proof'. Scholars sometimes use this expression to refer to an obligation to substantiate a position by providing supporting reason and evidence, but at other times they use this expression to refer to a sheerly practical need to provide an addressee with reason and evidence in order to persuade him. These two uses of the expression are commonly run together as though each had the same referent, but it is transparent that they do not refer to the same sort of burdens at all. When Whately introduced the idea of burden of proof into the study of argumentation, he used the term in the first of these senses. Where an advocate has the burden of proof, according to Whately, proof can properly be demanded of that advocate; he has an obligation to substantiate his position (1963). But as Whately's students elaborated his teachings, they came to speak of burdens of proof in a second, strictly practical sense. This development occurred in connection with the idea that there is a presumption in favor of existing institutions, generally accepted beliefs, and established policies and practices. In response to questions about the justification for this presumption in favor of the status quo, some students of argumentation and debate came to hold that inertia of an addressee's beliefs and commitments could make it necessary for an advocate to provide the addressee with reason and evidence in order to persuade that addressee. This is sometimes referred to as the "psychological burden of proof" (Cronkhite, 1966; Goodnight, 1980). [The so-called psychological burden of proof is conceptually similar to the legal idea that a risk of non-persuasion can generate a burden of proof.] Serious equivocation occurs when scholars speak of this so-called psychological burden of proof as though they were referring to some probative obligation. Right on the face of the matter, it seems apparent that where A is providing B with reasons to believe that p simply because that is what A needs to do in order to persuade B, there is no particular reason to talk as though A had an obligation to provide B with reasons. Surely, we are not prepared to accept the idea that whenever a person has a practical need to do something, a person is then under

an obligation to do that.

Confusion between 'burden of proof' in the sense of obligation and 'burden of proof' in the sense of practical need seems to be very deep seated, so it may be worth our time to pursue the matter a bit further. Under what conditions do persons incur obligations generally? An answer to this question would enable us to determine whether the conditions which generate a "psychological burden of proof" fit the conditions under which obligations are generally undertaken. The distinguished philosopher G. J. Warnock provides an analysis of obligation which in my experience stands up well under pressure of tracing the obligations undertaken in various speech acts. Professor Warnock argues convincingly that obligations are incurred where: (i) it is foreseeable that others will suffer or will continue to suffer harm in the event the obligee does not act; (ii) others are counting on her acting in order to avert, prevent, ameliorate, or rectify that harm; and (iii) she must so act in order to avoid speaking or having spoken or even having acted falsely (1971). It is not the case that these conditions are satisfied whenever a speaker practically needs to provide reasons in order to persuade an addressee. Consider the hypothetical instance of a faculty member helping an undergraduate select a course to take in the following term. Some institutions describe this activity as advising, but in this instance, the faculty member is not the student's assigned academic advisor. The faculty member believes the student should take Math 217; the student is strongly inclined to take Art 107 instead. The faculty member recognizes that as a practical matter she needs to provide the student with reasons, if she is to persuade the student to take the math course. Shrewdly, the faculty member puts forward a mix of arguments, suggestions, considerations to think about, etc. Should we say that in this case the faculty member has an obligation to provide reason and evidence in support of her point of view? Application of Warnock's analysis indicates that she does not. The first condition does seem to be satisfied. It is arguable that the student will foreseeably suffer harm if the faculty member does not persuade him to take the math course. The second condition is only partially satisfied. In view of the institutional conceptions of faculty-student relations, the student may be counting on the faculty member to help him steer clear of harm, but the student is not specifically relying on the faculty member to persuade him to take the right course. But the third condition is plainly not satisfied by this case. There is simply no respect in which the faculty member has spoken or acted falsely when she refuses to answer demands that she substantiate her point of view. If in the middle of the conversation, the student asks point blank, 'What will I get out of Math 217 that's so important to my career', the faculty member might refuse to answer with a comment to the effect of 'Look, I think you know the answer to that question; think about it'. In producing this response she would have refused to substantiate her point of view, but she would not have spoken or acted falsely. The so-called psychological burden of proof does not seem to be tantamount to an obligation.

Reading Mr. Thomson's paper with the preceding thoughts in the back of my mind, I was pleased by his initial commitment to elucidate the "kind of obligation denoted by the term burden of proof." I said to myself, "He is on exactly the right track." But, then, I was disappointed when I came to Thomson's discussion of the rhetorical burden of proof and there encountered an obligation alleged to arise simply from the "doxastic inertia" of audiences and the corresponding practical need to provide reasons to persuade them. It seemed that the old equivocation between uses of the term 'burden' had crept into the discussion. I still have difficulty seeing that Thomson's rhetorical burden of proof is an obligation of any kind. Thomson might reply that my argument invokes an analysis of obligation which is too narrow or mistaken. That may be, but I should like to see an alternative conception which fits the ways in which obligations are incurred in speech acts and which shows his rhetorical burden of proof to be an obligation.

Turning now to the second topic on which I should like to comment: Thomson's reading of Whately. Mr. Thomson presents an exposition of Whately which is similar to an interpretation of the *Elements of Rhetoric*

provided by Douglas Ehninger and Michael J. Sproule (1963, 1976). According to this reading, Whately's understanding of presumption and the burden of proof took on an increasingly psychological cast through successive editions of the *Elements of Rhetoric*, moving from a view dominated by legal concepts to a view which sees "proof burdens and presumptions as operating according to psychological principles" (Sproule, 1976, p. 117). This interpretation holds that as Whately's views matured, he came to regard the sheerly psychological predispositions of an audience favoring certain arguments as a presumption supporting those arguments. While this is a highly regarded reading of Whately, I suggest that it be viewed skeptically.

Two considerations argue against the idea that Whately eventually recognized a psychological burden of proof. First, this interpretation uncharitably reads into Whately the equivocation in uses of the expression "burden of proof" discussed above. Second, there is relatively little evidence that Whately himself confused the obligation to substantiate a position with the strictly practical need to do so. With only occasional slippage,¹ his discussion treats the burden of proof as an obligation. At several points he discusses psychological factors which can influence the proper identification of presumption and, so, can impact the burden of proof. But the attention he gives to psychological predispositions ought to be read with an eye to the basic structure of his discussion of presumption and the burden of proof. Whately is primarily concerned to call attention to certain mistakes which persons are prone to make in the identification of probative burdens. The doctrine for which he is best known holds that often advocates fail to recognize a presumption properly favoring the status quo because the novelty of a contrary belief favorably impresses the audience and distracts the advocates. It is tempting in this connection to interpret Whately as maintaining that here a "presumption in favor of the status quo" has been rebutted by "a psychological counter-presumption based on audience-member orientation" (Sproule, 1976, p. 120). But Whately, himself, does not refer to the psychological state excited by the attraction of novelty as a presumption of any kind. This is a key point because Whately regards the burden of proof as a correlate to presumption; if the psychological state excited by the novelty of idea is not a presumption, then there is no particular reason (in Whately's conceptual scheme) to suppose that the need to contend with that psychological state is a burden of proof. Whately's point is simply that the psychological state excited by the appearance of novelty prevents recognition of a proper presumption; the thrust of his account is to alert advocates to the possibility of this error. Whately's discussion of presumption and deference is likewise designed to caution advocates regarding psychological predispositions which may impede proper recognition presumptions. Whately regards deference as "an habitual Presumption in favour of ... one's decisions or opinions" (p. 118), and he is concerned to show the way the feelings associated with this habitual regard, and also the repugnance some may feel in regard to it, influence the presumptions persons draw and may lead to unreasonable presumptions. Thus, Whately warns, "That the degree of Deference felt for any one's Authority ought to depend not on our feelings, but on our judgment, it is almost superfluous to remark; but it is important to remember that there is a danger on both sides; —of an unreasonable Presumption either on the side of our wishes, or against them" (p. 120). It seems that for Whately, the psychological predispositions of persons may influence their capacity to recognize presumptions, but it is far from clear that Whately regards the psychological state of the audience, in itself, as sufficient grounds for a presumption. Additional considerations, perhaps having to do with fairness, must also come into play before Whately speaks of presumption. If that is correct, then in his view the audience's psychological state, taken alone, could not impose that proper correlate of a presumption, the burden of proof, on advocates.

My third comment is addressed to Thomson's verbal presumption. Here, too, Mr. Thomson develops a view of probative burdens similar to accounts presented by textbooks on argumentation and debate. The latter have sometimes maintained that burdens of proof are properly governed by the maxim, "He who asserts must prove." Cronkite, perhaps misleadingly, suggests that this view treats the burden of proof as a logical constant (1966). This maxim of assertion incurred probative burdens may be an useful guide to argumentation in the courts and in

situations where scholars formally address one another. But I doubt whether it has much serious application to ordinary conversation and/or to public discourse on the whole. This doubt extends to Thomson's account of "verbal burden of proof" in natural language argumentation.

Here, it seems me, we should address two distinct claims. The first holds that where a speaker seriously says that *p*, the speaker incurs a burden of providing adequate evidence for *p* (if such is demanded of the speaker). The second claim holds that where a speaker asserts that *p*, the speaker takes on the burden of providing adequate evidence for *p* (should such be demanded of the speaker). Thomson argues for the first of these claims on the basis of Grice's "Cooperative Principle" and its application via the "Maxim of Quality." It seems to me that scope of Grice's Maxim of Quality embraces all or most serious acts of saying that something is the case. The Maxim of Quality is tantamount to the presumption of veracity, viz., the presumption that a speaker is to believe what she says and to have made a reasonable effort to ascertain the truth of the beliefs expressed (have adequate evidence for what she says). Mr. Thomson's account of the verbal burden of proof seems to imply that seriously saying that *p* and asserting that *p* are identical, but to do his account justice we ought to allow for the possibility that asserting is a narrower class of speech acts and saying something is somewhat broader class.


Is it plausible to suppose that whenever a speaker—using a natural language—says that *p*, the speaker incurs a burden of proof? Grice's Maxim of Quality holds only that the speaker is to have adequate evidence for what she says. Surely there is a considerable difference between an obligation to have adequate evidence and an obligation to produce that evidence in response to demands from addressees. A teacher says to her class 'With the exception of well documented acute personal or medical crises, I have never failed to penalize late papers less than 10 points'. She has obligation to be speaking sincerely and to have "evidence" which supports what she says. But I see no basis for supposing that she has any obligation to answer demands that she produce that support on the spot. If a student asks, 'How do we know that you've done that?' her response to this impertinence might properly be 'Believe me'.

It is more plausible to suppose that a speaker incurs a burden of proof in and by asserting that *p*. To pin down this supposition, however, we should know what it is about asserting that generates that obligation. So far as I can determine Mr. Thomson's account of the verbal burden of proof does not solve this problem. And I doubt whether a careful account of the ordinary (communicative) act of asserting something would show that speakers typically or necessarily take on a burden of proof in making assertions. My skepticism arises, in part, from considering cases in which persons assert rights. Some years ago in a discussion of natural rights, Professor H. L. A. Hart noted that it is characteristic of rights that they can be asserted as justification for restricting the freedom of others (1967). Thus, a home owner might say to a stubborn and obnoxious guest 'This is my home; you are to leave'. Here we have a clear case of asserting; the speaker has asserted that this is his home. It also seems doubtful that in making this assertion the speaker has incurred a burden of proof. I do not mean to suggest that there are no circumstances in which a speaker who has made this assertion might be called upon to substantiate it. But I am inclined to think that Professor Hart is correct in this respect: a characteristic function of rights is that they can be asserted as basis for restricting the freedom of others, and it does not seem to me that assertions of rights could fulfill this function if, upon asserting her rights, the speaker automatically or typically incurred a burden of proof.

In conclusion, I would like to say that Mr. Thomson's paper provides a fine focus for interdisciplinary discussion of the problems which trouble our understanding of the burden of proof in argumentation. I can only hope that my comments have been as helpful. I should also say that, while I have been critical of some of the work on this topic in my own field, I believe that recognition of the importance of presumption and burdens of proof in

persuasive argumentation is one of the most important achievements of modern rhetorical theory.

Note

1. In his discussion of presumptions in favour of existing institutions Whately writes, "No one is *called on* ... to defend an existing institution" (p.114). Here Whately seems to waffle between 'no one is in fact called on' and 'no one is properly (or fairly) called on'. But such instances of possible equivocation regarding the use of 'burden' are rare in his text. 

Bibliography

Cronkhite, G. (1966). The Locus of Presumption. *Central States Speech Journal*, 17(4), 270-276.

Ehninger, D. (1963). Editor's Introduction. In D. Ehninger (Ed.), *Elements of Rhetoric: Comprising an Analysis of the Laws of Moral Evidence and of Persuasion, with Rules for Argumentative Composition and Elocution*, (pp. ix-xxxii). Carbondale: Southern Illinois University Press.

Goodnight, T. (1980). The Liberal and the Conservative Presumption: On Political Philosophy and the Foundation of Public Argument, *Proceedings of the Summer Conference on Argumentation*, (pp. 304-337). Falls Church: Speech Communication Association.

Hart, H. L. A. (1967). A. Quinton (Ed.), *Are There Any Natural Rights?* In Political Philosophy, Oxford: Oxford University Press.

Sproule, J. M. (1976). The Psychological Burden of Proof: On the Evolutionary Development of Richard Whately's Theory of Presumption. *Communications Monographs*, 43, 115-129.

Warnock, G. J. (1971). *The Object of Morality*. London: Methuen and Co.

Whately, R. (1963). D. Ehninger (Ed.), *Elements of Rhetoric: Comprising an Analysis of the Laws of Moral Evidence and of Persuasion, with Rules for Argumentative Composition and Elocution*. (reprint edition ed.). Carbondale: Southern Illinois Press.

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