*Abstract: Presumption as a part of formal debate is examined in this paper, which discusses Richard Whately's ideas about presumption and burden of proof in argumentation, how these ideas have been applied as paradigms and judging criteria in competitive debate, and how these same ideas fit into the practice of parliamentary debate. General conclusions about broad applications of debate "rules" are drawn, then, from this example, and suggestions are made for future study.*

# PRESUMPTION IN PARLIAMENTARY DEBATE: EXAMINING WHATELY'S IDEAS AND THEIR APPLICATION TO AN EMERGING AND EVOLVING DEBATE STYLE

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Most debate coaches introduce the term "presumption" to their student charges as a negative position by which one could argue that the *status quo* was presumed to be "innocent" and had to be proven "guilty" before the judge could vote for the affirmative--that the "burden of proof" is on the affirmative. The negative can sit back and, with that infamous "if it ain't broke, don't fix it" line of reasoning, win any round where "harm" or "significance" seemed questionable by simply claiming presumption. Policy debaters are taught that, most of the time, judges understand the phrase "innocent until proven guilty" and agree with the line of reasoning that advocating change for the sake of change is rarely justified and that the damage presented by the affirmative to be acceptable must truly offset the risks of change. Presumption functions as construct; a debate-rules "given"; a monolithic advantage for the *status quo* in most policy debate rounds (Sproule, 1976, p. 115). In their textbook *The Art and Practice of Argumentation and Debate*, Hill and Leeman (1997) stated, "For many years, scholars have treated presumption as a fixed or *stipulated* convention of the debate process. Presumption is stipulated to a particular entity (belief, action, institution, person, and so on) before the interaction begins, and that entity is assumed to retain its argumentative ground until the burden of proof is fulfilled" (p. 144). These same authors stated later, "In a formal debate, the negative always has presumption assigned via the stipulated dimension and the affirmative always has the corollary burden of proof" (p. 148). Of course, such a policy debate-based view of presumption as part of rhetorical communication, while perhaps helpful as a way of coming to a decision in debate rounds, certainly limits the possible understanding of the theory. This paper will discuss Richard Whately's writing about presumption and burden of proof in argumentation, how these ideas have been applied as paradigms and judging criteria in competitive debate, and how these same ideas fit (or do not fit) into the practice of parliamentary debate. Finally, some conclusions about broad application of debate rules are drawn from this example, and suggestions are made for future study.

Richard Whately wrote and rewrote the sections of his *Elements of Rhetoric* dealing with the theory of presumption and burden of proof during the period 1830 to 1846. He first argued that presumption operated in favor of an existing institution, an accused person or book, and prevailing opinion. "As a result, a burden of proof falls on those who (1) propose alterations in existing institutions, (2) make accusations in court and (3) maintain an opinion contrary to the prevailing one" (Sproule, p. 118). While Whately was the first rhetorician to use terms common in courts of law to discuss persuasion, J. Michael Sproule (1976), in *Communication Monographs*, asserted that Whately's theory of presumption is much more than the convenient mating of jurisprudential terms to the study of rhetorical communication. Sproule argued what is important in studying Whately is not his initial claims alone, but evolution of the Archbishop's theory from an essentially rule-based or legal entity, as described in the early versions of the *Elements*, to an audience-based understanding of argumentation and persuasion. Sproule saw the gradual development as indicative of "substantial changes in [Whately's] viewpoint regarding the agency of assignment [of presumption] and the nature of the advantage gained [by the same]" (p. 123).

Most easily observable is Whately's attitude toward audience. In early discussions of presumption, the audience is passive--merely observing the argument. Later, Whately wrote "in any one question the Presumption will often be found to lie on different sides, in respect of different parties" (p. 120) and, by 1836, Whately saw presumption as determined by sociological factors, such as group membership, and psychological factors, such as novelty, arguing that at times, assigned or stipulated presumption is correctly rebutted or even overturned by new or novel ideas. Whately's attitude toward audience and their role in assigning and determining the importance of presumption in making decisions culminated in Whately's statement that "advocates should not always expect an otherwise plausible presumption to be perceived by a given set of auditors. Presumption was an advantage, but an unrecognized advantage counted for little." Instead, in making a decision, "the individual seeks the evidence, judges its merits, and, in the absence of demonstrable proof, convinces himself of the certitude of the proposition"--a far cry from the passive audience of Whately's early writing (p. 123).

Critics of Whately saw no such explainable or understandable evolution of thought, but merely the confusion of the Archbishop about his own system. Gary Cronkhite (1966), for example, identified three types of presumptions in Whately--psychological, legal and assertive--and claimed that these were not types of presumption at all, but would be better described as deference or consensus. He went on to claim that the least confusing rule and the rule best employed in extra-legal argument is simply "He who asserts must prove"(p. 270-271). The understanding of the audience as to what constitutes proof was not a part of the consideration of presumption; the purpose of presumption was to assign the duty of proving assertions, not determining what would constitute that proof.

Having discussed Whately's theory of presumption, an examination of the application of these ideas to competitive debate is appropriate. As discussed above, in traditional policy debate, presumption lies with the *status quo* and, therefore, the negative side of the debate. This view is in alignment with Whately's early writing about presumption. As Hill and Leeman point out, "the legislative model [of presumption] carries no assumption that the *status quo* is good, only that the change might be worse" (p.145). The judge, following a standard stock-issue or policy-maker paradigm, would consider presumption as the negative's "right to do no more than ask 'Why?'"(Cronkhite, 273-4) and thus advocate no change in the current system unless the affirmative presented compelling evidence of significant, continuing harm or of a comparatively advantageous way of performing a task that existed and was precluded manifestation by the current method of handling the same situation. "The advocate with presumption has no responsibility to justify her or his preoccupation of argumentative ground until the advocate with the burden of proof provides sufficient reason to question that preoccupation" (Hill et al., p. 147). Presumption also instructs a judge adopting a hypothesis-testing paradigm. In their discussion of the hypo-testing paradigm, Patterson and Zarefsky assert that presumption "indicates which side will be presumed correct in the absence of argument to the contrary" and, additionally, offer a "normative principle": "the fundamental presumption ought to rest against the resolution in order to assure that the resolution receives a through and rigorous test" (Lee & Lee, 1985, p. 169).

In "value" debate, presumption lies with the hierarchy of values maintained by the *status quo*. Rather than a legislative understanding of presumption, as discussed above in the realm of policy debate, presumption in value debate is based more on a legal understanding of presumption--that the accuser (here the affirmative) must prove the guilt of the defendant. The burden of the affirmative, then, is to prove one of two things: either the hierarchy of values maintained by the *status quo* is flawed and should be rearranged, or some policy or group of policies in place in the *status quo* does not reflect the hierarchy of values and should be changed. In the first scenario, a policy or several policies are presented to prove the skew in values--proof of "guilt"--then the affirmative proposes a reordering of values, which change in these same policies would demonstrate. In the second scenario, a proposition for change of a policy or policies is presented to bring certain policies into line with the value hierarchy--the *status quo* would be proven "guilty" of violating its own standards. While the nature of the "real-world application/theoretic value structure" argument may be an exercise in "chicken-and-egg" logic, the idea of legal presumption as a negative area

of argumentation is clear. The negative can rest in the position of presumption until the affirmative shows bad value-ordering or bad policies in that values are violated, maintaining its "innocence" until good and sufficient reasons proving "guilt" and justifying change are advanced. A judge can certainly take a traditional policy-maker position and base a decision on the policy changes advocated.

However, when making a decision, the debaters often ask the judge in a value debate round, especially as value debate is currently practiced on the CEDA circuit, to "weigh" one value against another or to decide which side more adequately upholds one value, often through means of a criterion for judgement. Affirmatives assert that traditional, stipulated presumption is a less important construct for decision-making than an applied "decision-rule" based on competing values--a type of what Whately called psychological presumption, reflecting what a particular person values and what that individual is likely to consider a "good reason" to consider an affirmative proposition (Hill et al., p. 145). Cronkhite takes issue with this sort of presumption as not being presumption at all:

> [T]he purpose of assigning presumption is to determine which side has the burden of proof . . . The . . . modification of this position which suggests that presumption always lies with morality, 'rectitude,' orthodoxy, the 'true, right or expedient,' or 'whatever accords with the natural laws of Providence,' [cannot be made because] arguments usually result from conflicts between two views of what is moral, true, or orthodox. How, then could presumption be assigned to one or the other?" (p.271)

Arnie Madsen and Allan D. Louden (1987), in the *Journal of the American Forensic Association*, quoted Matlon:

> "Definitions of presumption have undergone considerable change in recent years . . . [h]owever, all positions have one common theme, namely [s]he who assumes the burden of proof must produce the preponderance of argument" (p. 92).

Madsen and Louden then go on to reason

> "While this may be correct, it does not justify presumption in value debate, to the extent its requisite burden of proof is one which can apply to both the affirmative and the negative" (p. 92).

Stipulated presumption, then, may serve as a window through which to view policy issues and value hierarchy issues as they emerge in value debate rounds, but contention exists as to the role of any sort of presumption when determining what a judge values or should "weigh" when considering values at odds.

This is the milieu into which parliamentary debate as an emerging debate style must step. Presumption, while still infinitely valuable as a construct for legislatively modeled policy debate, may not be useful in value debate, especially in areas outside policy consideration. As Whately described the situation in the nineteenth century, presumption may exist in theory, but if it is not seen as an advantage in the mind of the audience, it is useless as a means to advocate an action. An examination of how debaters and critics might evoke presumption in parliamentary debate rounds is in order.

Some rounds of parliamentary debate certainly suggest a wholehearted adoption of a traditional legislative or legal understanding of presumption. Consider a debate based on the resolution "This House would enact campaign finance reform." Obviously, a straightforward interpretation of this prescriptive resolution would place the government in a position of advocating change from the current practice of campaign financing or the current regulation of campaign finances. Either way, the opposition is granted the presumption--the way things are currently being handled is presumed to be adequate until some problem, abuse, injustice or like. cause large enough to mandate a change is presented by the government.

However, the current practices of parliamentary debate, and especially those practices of the government's right to define terms in the resolution and ground for debate, strain a traditional understanding of presumption as an always-and-only negative/opposition advantage. A debate on the metaphoric resolution "The house believes that blue is better than red,"

for example, in which the government defines "blue" as Capitalism and "red" as Communism, calls for debate about two competing economic systems. Both teams must advance reasons for the superiority of their system; neither side could win the debate by merely asking "Why?" (Assuming the debate takes place in the United States, when the government team has defined the resolution's terms in such a way as to place themselves in a position advocating Capitalism, any presumption based merely on the idea that this US *status quo* is capitalist is awarded to the government, not the opposition.) Certainly, if presumption in some form exists, it is located in the judge or audience's understanding of these economic systems and not awarded by an examination of who asserts and therefore proves.

Presumption, then, at least of the stipulated, construct variety, may not exist in all rounds of parliamentary debate. Perhaps it should not. Ronald Lee and Karen King Lee (1985), writing in the *Central States Speech Journal*, suggest four specific criticisms of a rule-based approach to presumption in argumentation, three of which are especially compelling and should cause the parliamentary community to examine carefully how tightly it wishes to embrace presumption (or any rule) as an always-present, defining construct in debate rounds. First, the authors cite a lack of what they call magnetism, noting that

> "[a] rule reports on procedure rather than the speaker's interests. Rules are external to the feeling of the speaker and do not logically commit the interlocutor to the psychological consequences of the statement" (p. 169).

Second,

> [a] rule-based approach to presumption cannot account for the *direction of the listeners' interests*. Rules do not have persuasive impact beyond whatever implicit or explicit force the accompanying sanctions may have. Whatever dynamic dimension the meaning of presumption may entail, the use of rules makes this an irrelevant consideration. To engage a rule is to make a statement about procedure rather than to suggest to listeners that the rhetorical force of presumption speaks to intensify or redirect their interests (p.170).

If the parliamentary debate community wishes to maintain public accessibility to the activity as a goal, surely attention must be paid to always keeping rules secondary to persuasive, logical argumentation as the major reason for decision. Third, a rule-based approach regarding presumption cannot allow intelligent disagreement over the assignment of presumption.

> "Competing presumptions characterize church and state disputes, the deference to authority when two disciplines clash, and the common struggle between value pairs such as freedom and responsibility or the right to know and the right to privacy" (p.170);

certainly the sort of arguments we all wish to hear in parliamentary debate rounds and the sort of topics where students receive the greatest benefit of the activity as they are forced to consider multidimensional issues from varying sides.

Cronkhite stated that his purpose in writing was "not to determine what the term [presumption] means, for its meaning for any given group can best be determined empirically" (p. 270). A legitimate arena for observation and discussion, then, is whether the parliamentary debate community wishes to use the current understanding of presumption as advanced by the NDT and CEDA or to come up with its own way of understanding the idea of presumption.

Clearly, the use of presumption to determine which side in an argument must assume the burden of proof seems logical in situations where a prescriptive resolution indicates that the government advocate change in policy. The judge is clearly able to enter the round in a policy-maker role, and the opposition can confidently occupy the ground it is given--secure that, no matter how small their territory is, the burden of proof falls on the government. Especially considering the fact that parliamentary topics are often as fresh as the morning news, presumption and the risk in scantly-

considered change are important ideas about which the opposition must be able to argue fluently to overcome the audience's interest in the "novel and current" over the "tried and true" and boring *status quo*.

However, demanding a fixed rule regarding presumption it probably not to the advantage of parliamentary debate. While relying heavily on the judge's ideas of what constitutes proof and who has to supply what amount of it, rounds in which both sides must assert and prove can be educational and allow for discussion of topics where the presumption isn't easily seen if it exists at all. If success in parliamentary debate is going to remain dependent upon the debaters' abilities to "read" an audience and on his or her ability to think quickly and not on some evocation of rules specific to the genre that mean little to nothing outside of a debate round, then the parliamentary debaters, coaches, and judges must guard against implementing rules from other forms of debate that may not apply readily to the parliamentary format.

Several areas for further study are apparent. An analysis of some of the traditional constructs and stock issues in policy and value debate and their possible application or misapplication in parliamentary debate is needful. For example, the stock issue of solvency has frustrated teams attempting to debate the policy implications of parliamentary resolutions. Resolutionality--the interpretation of the resolution advanced by the government and how accurately it mirrors the actual resolution--could be examined in light of topicality theory.

Also, a reexamination of the standard theorists, like Whately, and musing about how their theories can apply to the new genre of debate would provide an excellent area of primary source research and would allow consideration of these ideas on their own merits and not as they have been filtered through policy and value debate lenses in the past.

Whately's was a "contextualist" view of language and meaning, evidenced by his assertion that *use* is "the only competent authority" in determing the meaning of words (McKerrow, 1988, p. 219). Certainly we as responsible coaches, judges, and debaters should use a variety of arguments and argumentation theories to advocate our positions, and let our intelligent use of those types and theories instruct our debating rather than invoking rules of debate-types past to shape our emerging and evolving style of debate.

**Selected Bibliography**

Cronkhite, G. (1966). The locus of presumption. Central States Speech Journal, 17, 270-76.

Hill, B. & Leeman, R. W. (1997). The art and practice of argumentation and debate. Mountain View, CA: Mayfield.

Lee, R., & Lee, K. K. (1985). Reconsidering Whately's folly: An emotive treatment of presumption. Central States Speech Journal, 36, 164-177.

Madsen, A. & Louden, A. D. (1987). Jurisdiction and the evaluation of topicality. Journal of the America Forensic Association, 24, 73-94.

McKerrow, R. E. (1988). Whately's philosophy of language. Southern Speech Communication Journal, 53, 211-226.

Sproule, J. Michael. (1976). The psychological burden of proof: One the evolutionary development of Richard Whately's theory of presumption. Speech Monographs, 53, 115-129.