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Commentary on Crosswhite

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In Response To: James Crosswhite's [Reason and inertia in presumption and burden of proof](#)

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James Crosswhite is probably the major apologist for Perelman's work writing in English today. He has developed an exhaustive, sympathetic interpretation of Perelman's most abused concept, the universal audience, and has defended Perelman from more recent charges of extreme relativism (Crosswhite, 1995). In the paper under consideration here, he takes Gaskins to task for misreading Perelman and Olbrechts-Tyteca's remarks on burden of proof and presumption. By drawing attention to the underlying importance of inertia, he demonstrates that there is a far more extensive and coherent understanding at work than Gaskins has allowed.

Crosswhite proceeds on two fronts: First he examines the role of presumption in Perelman's theory of argumentation; secondly, he looks at the *New Rhetoric's* argumentation and defends it against the charge that it proceeds negatively. I will restrict my comments to the first of these.

To begin, I think it is important to look at some of the distinctions involved, especially between the normal and the norm, because the forces of change and inertia have a lot to do with this underlying relationship.

Just over mid-way through the paper, in discussing the strength of arguments, Crosswhite suggests the following relational involvements:

effective	--	particular	--	normal
valid	--	universal	--	norm

He writes there: "the idea of the strength of arguments is created by a distinction between two viewpoints -- the normal (or usual) and the norm (the normative). This allows the dissociation of validity from effectiveness." After all, effective arguments may not be strong ones; valid arguments are. He points out that *The New Rhetoric (TNR)* provides no logical ground for these distinctions and cites the text: "The normal, as well as the norm, is definable only in relation to an audience whose reactions provide the measure of normality and whose adherence is the foundation for standards of value...The superiority of the norm over the normal is correlative to the superiority of one audience over another" (*TNR*, 463).

This is an important passage. It seems to provide an answer to some central questions about the normal and inertia. After all, the value of inertia lies in our being able to rely on the normal (*TNR*, 106); there is a presumption in favour of the normal. But one may ask: "who decides the normal?" Is it a clear-cut conception? Does it involve marginalizations and exclusions? That is, in effect,

is this Perelmanian idea subject to crucial criticisms drawn from the modernist/post-modernist debate? One suggestion might be that the normal is the just. But if so there would be no need for *TNR*, nor would there be any concern over how to move beyond (unjust) inertial forces (the concern that Crosswhite discusses at the end of the paper).

The passage from *TNR* 463 speaks of an audience in relation to which both the normal and the norm is defined. It also speaks of the superiority of one audience over another. Whence these audiences? I think it is important here to draw attention to the text represented by Crosswhite's ellipses. In spite of the apparent relations and distinctions discussed and suggested by Perelman and Olbrechts-Tyteca, they indicate here that the distinction between the normal and the norm is not an absolute one *because* the ideas are definable only in relation to an audience. But, they point out, it is a valuable distinction where "the reactions of a particular audience determine what is normal and the conceptions of a different audience provide the criteria for the standard" (463). A different particular audience? Surely not. As Crosswhite suggests, this second is the universal audience and the standard applied will be that of the rule of justice. But given what we know from elsewhere about the relationship between the particular and universal audiences, we can appreciate here what Perelman and Olbrechts-Tyteca mean by both the normal and the norm being defined in relation to *an* audience. Because the second audience that provides the criteria for the standard is the first audience in its universal mode. As we know, the universal audience exists *in relation to* the particular audience, is determined by it, and arises out of it. This helps us see the very close relationship between the normal and the norm, the is and the ought, and how these ideas are fluid, audience-determined ideas.

Perelman and Olbrechts-Tyteca's idea of a standard of reason or justice is not one that is imposed, ideally, from the outside. It arises from within, and is conditioned by real functioning audiences. This sets them apart from those who proffer more ideal, hypothetical, notions of universality.

But this again helps us to appreciate how important the notion of inertia must be in Perelman and Olbrechts-Tyteca's theory of argumentation, since it provides the stable background against which this fluidity is possible.

But then the next question is to ask further about the relation between the particular audience and its universal audience with respect to presumption and change. How in fact does this change take place? I'm not sure this is sufficiently answered by any of the three authors involved (Perelman and Olbrechts-Tyteca, or Crosswhite) given the remaining concern over moving beyond unjust inertia. In fact, this may be part of the ongoing project of exploring the fascinating but difficult relationship between the particular and universal audience.

Inertia, we are told, as defined in its relation to this argumentative technique, tells us what will be the case unless we establish a precedent for change. But

how is this achieved? How does the universal audience, as it were, see above the normal?

Precedents here are "already existing agreements about values." Hence, the sense of presumption. We might label this a first sense of precedence, that of the closed case. But as argumentation theorists we are also interested in a second sense involving the establishing of new precedents: the break from the usual.

Crosswhite quotes *The New Rhetoric*:

It is through inertia that the technique of the closed case is extended, so to speak, into the technique of the precedent. The only difference between the repetition of a precedent and the continuance of an existing state is that in the former the facts seem discontinuous. With this very small shift in perspective, we can still see inertia at work: it is as necessary to prove the expediency of changing behavior when confronted with the repetition of a situation as it is to prove the utility of changing an existing state of affairs (107).

Here the precedent (sense¹) flows out of the closed case. The shift in the burden of proof comes when we try to establish precedents in sense². On the one hand, though, we have gradual change: X should be allowed because while it appears different, it is *essentially* like other cases. A student is released from writing an exam not because of personal illness but because her children are ill. It is justified on essentially the same grounds as a personal illness, but it established the precedent of allowing exemptions that involve not the student her or himself but a second party.

In this case, we have a precedent for doing X and that is the *usual*. But some change has taken place because the two cases are *only* analogous, not identical. It is the presumption in favour of the usual that allows such a notion of precedent. (The modification of the group which alters the normal (*TNR* 72) is another example of slight change).

We also have to account for cases that break with the usual, that do something for which there is no precedent. Is this where a superior audience breaks in? This is where I think the answers in the *TNR* end. And it is in this direction that I see Crosswhite pointing at the end of the paper with the discussion of the conservative dimension of inertia and the problem of it sometimes appearing as an unjust force. Here, it seems, what has been seen as a positive feature of inertia (*TNR* 105)— that in the form of the closed case it avoids the repetition of decisions — now shows a darker side. Inertia in this sense appears to give certain things an immunity from inquiry, a sense of not needing to be scrutinized because it is part of the given. This is problematic insofar as it seems to be antithetical to the openmindedness usually deemed essential for argumentation. In Perelman's terms, perhaps, what has been deemed within

the scope of demonstration, and thus outside of the interests of argumentation (and here the metaphor of the axiom and its role in inertia seems apt), suddenly reveals itself to warrant argumentative analysis after all: a break in inertial force, a new precedent, is called for. Suggested here is the most crucial and difficult shift in the burden of proof: where an accepted presumption is now deemed unjust, the onus is on those who would make such a judgment to justify it. It involves, as I suggested above, the universal audience within a particular audience seeing itself and its assumptions in a new way. But just how this takes place awaits further consideration.

James Crosswhite provides a powerful case for rejecting Gaskins' reading of Perelman and Olbrechts-Tyteca's theory of argumentation, and in the process serves to show the centrality of the concept of inertia. At the same time, though, he raises further questions about the very idea that his analysis has laid bare.
