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Nature and Reason: Inertia and Argumentation

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Title: Nature and Reason: Inertia and Argumentation

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1. Introduction

Presumption and Burden of Proof issues play a unique role in argumentation studies. Particular argumentative methods and techniques may advance or deter a line of reasoning, but burden and presumption issues decide when a line of reasoning is needed at all. There is little doubt that burden and presumption issues are hugely influential in determining the outcome of conflicts. In law, most burden and presumption issues are typically decided well before trials proceed and in fact must be decided in order for trials to go forward. Once the burden and presumption issues are decided, some cases resolve themselves.

And so being able to shift the burden of proof or change presumption is a power that seems to be qualitatively different from the power of ordinary argumentative techniques. For it is a power that shapes the rules whereby arguments proceed and the standards by which they are evaluated. Other kinds of arguments take place within the framework established by burden and presumption. Burden and presumption govern argumentation, make it possible, limit and define its outcome.

2. The Burden-shifting Society

In many institutionally governed argument fields, burden and presumption provide relatively stable frameworks for argument. In many cases, no one attempts to shift burdens and no one attempts to change reigning presumptions. Where burden and presumption structures remain unchallenged, one has a great deal of agreement that the issues have been decided fairly, and so one has a certain stability of institutions and practices. So it is not surprising that in his book, *Burdens of Proof in Modern Discourse*, Richard Gaskins finds that in situations of deep uncertainty, in times of doubt about foundational matters of burden and presumption, burden shifting becomes a more common technique of argumentation. It is a dream of argumentation theory to be a theory of sociality, to find social forms to be determined by the kinds of arguments that are signally persuasive for the groups in question. Gaskins gives a wonderful example of such an attempt, finding not only a way to measure social uncertainty by identifying what kinds of argumentative strategies are taking power, but by actually coming to critical judgments about a society because of the frequency and the occasions of use of a strategy.

Douglas Walton has a corrective response to Gaskins' theoretical zealotry. He

points out that the shifting of burden that goes with the argument from ignorance is not at all simply a fallacy but a very reasonable adaptation to practical situations of complexity in which fairly quick decisions are needed. The ability to formulate an argument for a course of action when a course is required and no one else seems able to formulate an argument is hardly a sign of cultural decay; it is a sign of a creative and practical mind that has adapted to a situation.

However, it is not clear that Gaskins and Walton are speaking of exactly the same thing. It is one thing to use the argument from ignorance in a situation in which a choice must be made on the basis of the best line of reasoning available within a very limited amount of time. It is another to resort to burden shifting that does not require an explicit argument from ignorance. For example, when Gaskins discusses Kant's antinomies, he is more concerned with the problem that presumption is entirely vulnerable to being challenged at any point, even when arguments have been offered on each side. And timeliness is not an issue in the situation of Kant's antinomies. In addition, burden issues regard more than simple arguments from ignorance; they also regard standards such as "beyond reasonable doubt," or "by a preponderance of evidence." And presumption in law seems to work across the line between argument from ignorance and burden issues, with presumption in argumentation in general often taking on an even broader meaning.

I want to shed some light on this unique issue of burden and presumption by exploring Chaim Perelman's writings on the subject. Perelman agrees with Walton that there is nothing strictly fallacious about the argument from ignorance since in the end Perelman doesn't have much tolerance for the concept of a fallacy at all. There are argumentative techniques and there are counter-techniques. And, like Walton, he's usually keen on showing the rational dimension of what many people would call fallacies. However, he also seems to see what Gaskins sees--the unusually important role that presumption plays in argumentation. In fact, I believe that Perelman's account of presumption is enormously subtle, and capable, I think, of explaining what truth there is in Walton's and Gaskins' approaches to the issue.

3. Gaskins' Attack on *The New Rhetoric*

Richard Gaskins deploys a critique of Perelman as an important part of the argument of his book on *Burdens of Proof in Modern Discourse*. His arguments against Perelman's approach run like this. First, Perelman's theory is weak because it depends on shifting the burden of proof. This is especially troubling according to Gaskins because Perelman includes no developed account of burden-shifting or presumption in his theory. That is, Perelman is making a move he cannot account for. Further, when Perelman does speak of presumption, outside of situations in which presumptions are institutionalized, they are completely up for grabs. Here Gaskins goes for the aorta of what he calls Perelman's "humanistic idealism" (he makes this sound like an epithet in the paragraph in which this phrase appears): "The major barrier to restoring

rhetoric to intellectual respectability has been its history of troubled association with relativism...the price of Perelman's 'freedom' could be the utter loss of standards, fixed principles, and other forms of authority (36)."

The major difficulty with Gaskins' analysis of Perelman's theory is that he concerns himself only with a very abstract version of Perelman's argument—one he finds in the last paragraph of *The New Rhetoric*. Here is the passage:

Only the existence of an argumentation that is neither compelling nor arbitrary can give meaning to human freedom, a state in which a reasonable choice can be exercised. If freedom was no more than necessary adherence to a previously given natural order, it would exclude all possibility of choice; and if the exercise of freedom were not based on reasons, every choice would be irrational and would be reduced to an arbitrary decision operating in an intellectual void. It is because of the possibility of argumentation which provides reasons, but not compelling reasons, that it is possible to escape the dilemma: adherence to an objectively and universally valid truth, or recourse to suggestion and violence to secure acceptance for our opinions and decisions. The theory of argumentation will help to develop what a logic of value judgments has tried in vain to provide, namely the justification of the possibility of a human community in the sphere of action when this justification cannot be based on a reality or objective truth (quoted in Gaskins 31-32).

And here is the next sentence, the final sentence *in The New Rhetoric*, the one that Gaskins leaves out: "And its starting point, in making this contribution, is an analysis of those forms of reasoning which, though they are indispensable in practice, have from the time of Descartes been neglected by logicians and theoreticians of knowledge" (TNR 514). Remember this sentence; I will return to it shortly.

Gaskins judges this passage and in fact the entire project of *The New Rhetoric* as follows:

As a subtle example of argumentation in its own right, based entirely on affirmative inferences from negative assertions, this passage illustrates a central paradox in Perelman's approach. It all boils down to a hypothetical proposition, using an argument form strangely absent from Perelman's compendium: if formal models of reasoning lead to abhorrent practical results, then the new rhetorical model must be embraced as a valid alternative (32).

Now if this were what Perelman's argument "boils down to" then he wouldn't have had to team up with Lucie Olbrechts-Tyteca and they wouldn't have had to write *The New Rhetoric*, which includes, in addition to the last paragraph, 500+ pages of framework and starting points theory and, of course, a very large argument by example that includes an analysis of around 50 distinct

techniques of argumentation. *This analysis*, say Perelman and Olbrechts-Tyteca explicitly in the very last sentence of their treatise, is the starting point for the justification of the possibility of free human community in the sphere of action when certainty is not available.

However, this does not stop Gaskins from pursuing his straw rhetorician. To continue the earlier passage:

One could respond to [Perelman's] eloquent plea by asking whether Perelman's model of rhetoric--in addition to being something useful and inspirational--is also valid, true, correct or rational. But from Perelman's point of view this question misses the purpose of the whole rhetorical enterprise: to liberate us from all such inaccessible criteria of categorical judgment... But even more important, the new rhetoric has not even prevailed according to its own rhetorical standards. Some permissive spirit or contingent license is necessary to keep it alive as an option for further deliberation. In short, something like a presumption of validity-until-proven-false haunts Perelman's basic argument... Perelman's move follows the grand strategy of shifting the burden of proof. Whereas for centuries the onus weighed heavily on would-be challengers to formal logic, Perelman's argument reverses that presumption (32-33).

There are two kinds of difficulty in Gaskins' critique of Perelman. First, there is a problem with Gaskins' concept of burden of proof and with the argumentative strategy he employs. Second, there is a related problem with his understanding of Perelman's rhetorical theory. Gaskins' concept of burden of proof goes way beyond any usual account of what the term means. For Gaskins, it does not have to do directly with what standards of proof must be met by arguers. Neither does it have to do, at bottom, with who shoulders the burden of having to argue, or with what party the presumption rests. Instead, as he says, "Among the many dialectical functions performed by the courts, I have singled out their administration of burdens of proof. By purposely expanding this concept beyond the set of technical rules found under that label in the major textbooks on legal evidence, I mean to include the entire range of practices by which courts gain control over indeterminate questions of fact and value" (37). Gaskins develops this expanded concept and then carries it well beyond the courts, finding in public discourse in general and in theories of reason especially many different kinds of attempt to "gain control over indeterminate questions of fact and value."

However, if *any* attempt to "gain control" over these questions in conditions of uncertainty is taken to be burden-shifting, then the entire sphere of argumentation *The New Rhetoric* analyzes and out of which it argues is going to be a sphere of burden-shifting. The charge might be half-plausible if one reduced *The New Rhetoric* to a truncated and abstract version of one of its arguments--as Gaskins does in his citation of the book's last paragraph.

However, it is much less plausible if one acknowledges that Gaskins' charge is just what *The New Rhetoric's* many examples of techniques of argumentation are there to refute--that people can resort only to irrational burden-shifting struggles when there are not established procedures for achieving finality in argumentation. *The New Rhetoric's* many examples show that people really do "gain control" of questions of fact and value even when such matters cannot be determined with certainty. Gaskins' wildly expanded notion of burden of proof makes the real argument impossible to join. From Gaskins' viewpoint, Perelman's account of how we reason in conditions of uncertainty can be *about* nothing more than, and can itself *be* nothing more than, burden shifting. Again, as long as one doesn't look at *The New Rhetoric's* real argument, in its detail, one can make this argument seem half-plausible.

The other difficulty with Gaskins' approach is that he misunderstands *The New Rhetoric's* argument fairly completely. He believes that Perelman is trying to model and ground his theory of argumentation on juridical procedures whose complexities he misunderstands. He misses the fact that *The New Rhetoric* is finally grounded in a concept of justice, not the procedures of law. Gaskins believes that *The New Rhetoric's* argument is negative, an argument about the inability of formal theories to account for reasoning, and so ignores the real substance of Perelman's case. And Gaskins believes that Perelman's discussion of presumptions in his account of how specialized audiences reason exhausts what he has to say about the matter. In order to show far wrong Gaskins has gone, it's going to be necessary to show what *The New Rhetoric's* real account of these matters is.

4. Inertia and Reason in *The New Rhetoric*

At critical junctures in *The New Rhetoric*, the authors resort to naturalistic metaphors. No juncture is more critical than when they formulate the concept of "inertia." Inertia is the foundation of the rule of justice (218-219), which is in the end itself the measure of the strength of arguments--Perelman's version of a validity criterion. How is it that inertia is the foundation of justice and reason? What strange trick allows a treatise devoted to reason and freedom to rest finally on a metaphor relating to a force of physics? It's an interesting story, and one that puts the issues of burden and presumption in a remarkable light.

The discussion of inertia takes place in part two of *The New Rhetoric*, which is concerned with the starting points of argumentation--i.e. with a background that must be in place for argumentation to proceed. Part of this background is fixed and is not arguable: facts and truths, for example. Part of it is fixed for particular audiences but not for others--values and hierarchies, for example. Presumptions occupy an interesting in-between place--they enjoy a universal acknowledgment, but adherence to them, although universal, is not always certain or fast. And so adherence to presumptions can be strengthened or weakened by way of argumentation. Presumptions usually regard what is likely or probable--for example the presumption that other people are telling us the truth. We usually have to have reasons to doubt what others say; the

presumption lies on the side of truthfulness. Of course, there are times when this presumption's power can be drastically reduced by arguments to the contrary--usually by arguments that point out what is not normal about the situation in which the presumption might be made or that call the underlying assumption about what is normal into question. Perelman mentions other common presumptions in this section: the presumption that actions reveal the character of the person, the presumption that what is said to us is somehow of interest to us, the presumption that actions can be understood and explained. Such presumptions about what is normal rest, says Perelman, on a reference group of normal people. Such presumptions are both universally held--and they can be strengthened and weakened by argumentation.

We can easily see why Gaskins might focus on the weakening and even collapse of presumption as a signal indicator of social dissolution, the decline of reason, and the cause of adversarial eristics. Much reasoning--especially in law--depends on what one can reasonably take for granted about human behavior. The more agreement about this, the easier to proceed with argumentation; the less agreement, the more burdens and presumptions become matters of argument themselves. Think of the presumptions of heterosexuality and of able-bodiedness and of the social conflict around whether these presumptions are warranted--which is, as Perelman points out--conflict about who is in the reference group from which the concept of the normal is derived.

However, what is most interesting about presumption in Perelman is that it is thought of as analogous to a natural phenomenon. Presuming is not simply an action we take but a condition for life and reason. Here is one of the critical passages: "In most cases...a speaker has no firmer support for his presumptions than psychical and social inertia which are the equivalent in consciousness and society of the inertia of physics" (TNR 105). This is a remarkable equivalency, since inertia has a place of such primacy in physics. Inertia is responsible in a profound way for what regularity and order there are in physics--for the intelligibility of the physical world. Perelman is claiming that there is something like this same force operating to give reason and society what order and intelligibility they have as well. Sustaining presumption is this primary inertial force. This view of a natural force operating in reason is worlds away from Gaskins' conclusion about the arbitrariness of presumption in Perelman's account of reasoning. Here is Gaskins: "It is not surprising that Perelman treats presumptions as isolated parochialisms, rather than as broad cognitive or strategic forces. For him presumptions are simply localized biases or prejudices, characteristic of discrete groups but certainly not binding on the community as a whole" (34).

However, let me quote Perelman on inertia a little further:

It can be presumed, failing proof to the contrary, that the attitude previously adopted--the opinion expressed, the behavior preferred--will continue in the future...According to Paulhan, the strange thing

about our condition is that it is 'easy to find reasons for strange acts, but difficult to find them for ordinary acts. A man who eats beef does not know why, but if he gives up beef forever in favor of frogs or salsify he will think up a thousand proofs, each more ingenious than the last.' Inertia makes it possible to rely on the normal, the habitual, the real, and the actual and to attach a value to them, whether it is a matter of an existing situation, an accepted opinion, or a state of regular and continuous development. Change, on the other hand, has to be justified..."(TNR 105-6).

In short, those who advocate for change bear the burden of proof. There is a host of issues to be explored in this passage. The world of the fact/value distinction is completely overcome here by the way inertia attaches a value to the real, the actual, the normal, the habitual. This means, as Perelman shrewdly notes, that change has a "devaluating effect." It "shakes social confidence" because inertia grants a value to the way things are (TNR 106).

However, the most important move in Perelman's account is where the psychical and social force of inertia takes on a property not shared by the physical world. In physics, inertia is a force that is continuous in space and time; it is not translated over breaks in time or space. In reason and society, matters are different:

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 are seen as 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" (TNR 107).

This is an insightful account, but I am not convinced by Perelman that this is a small shift in perspective. For it is the power of discontinuity in the working of inertia that allows for the force of precedence to take hold, and this is directly connected to the relation between inertia and justice, as we shall see.

One reaches *The New Rhetoric's* center of gravity at a remarkable passage on the strength of arguments. The passage occurs in the middle of a section titled "Interaction and Strength of Arguments," in which an essential identity of reason and justice is highlighted (TNR 460-65). Perelman and Olbrechts-Tyteca note that the strength of arguments is not something that can be measured psychologically or through social-scientific research. Rather, 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 distinction allows the dissociation of validity from effectiveness. Effective arguments may be effective without really being strong; they are effective with some audience as a matter of fact. Valid arguments are strong ones; they have their strength

not de facto but de jure.

According to *The New Rhetoric*, there is no logical ground for this whole framework of distinctions. Rather: "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" (463).

One might imagine, then, that *The New Rhetoric* would just stop the analysis there, and refer back to the earlier famous discussion of the universal audience. However, Perelman and Olbrechts-Tyteca go further in this section. They repeat the question, as if they were starting the analysis again: "What guarantees this validity? What provides the criterion for it?" (464) I take it that they are asking, What is the criterion by which a universal audience recognizes the strength of arguments?

Now, this is a strange question for them to ask. Earlier in the book, they developed a highly relativized concept of the universal audience. As they say, "Everyone constitutes the universal audience from what he knows of his fellow men, in such a way as to transcend the few oppositions he is aware of. Each individual, each culture, has thus its own conception of the universal audience" (33). However, here they say: "Our hypothesis is that ... strength is appraised by application of the rule of justice: that which was capable of convincing in a specific situation will appear to be convincing in a similar or analogous situation" (464).

In some respects, this section just repeats and elaborates on ideas that have been developed elsewhere. However, there is, I think, something new here. This is the only passage I know of in *The New Rhetoric* in which the universal audience is identified with a particular argumentative technique--here, the application of the rule of justice. If this is so, then the rule of justice has a unique status in the theory. In fact, since it is the rule of justice that allows a universal audience to judge the strength of arguments, we are justified in concluding that the idea of justice lies at the core of Perelman's philosophy of argumentation.

The quasi-natural force of inertia grounds presumption in its most fundamental form: change must be justified. However, inertia as *The New Rhetoric* conceptualizes it is also capable of supporting a more far-reaching presumption of justice--that a change that violates precedent must be justified, and more generally that precedents can be used in arguments. Here one glimpses the ethical heart of *The New Rhetoric's* project. The presumption of justice is a presumption of equity, and the rule of justice is the rational means by which equity is protected.

In its abstract form the rule of justice states that people in similar situations should be treated similarly, that situations that are alike should be treated alike. A teen-aged brother and sister murder their father. The rule of justice says that

we should treat this murder like any other murder. However, we can argue that the act and situation are not similar to most murders. The teenagers are young. Their action came only after years of violent abuse by the father. The children had reason to fear imminent violent actions, and so on. Without the presumption of the rule of justice, supported by inertia, none of these arguments would be available.

However, Perelman knew early on that the formal rule of justice was not sufficient to make this presumption of equity concrete enough to reach decisions in difficult cases. People would always argue about whether actions or situations were relevantly similar. In his positivist phase, he had attempted to solve this problem abstractly and formally, through conceptual analysis. However, this led him to a famous impasse. The only way to reach conclusions about real cases was to make value judgments about the concrete details of cases: young people should be treated differently from adults in criminal cases. At a certain level of suffering from violence preventive counter-violence is justified, and so on. But Perelman despaired of being able to justify these kinds of statements philosophically. From the positivist position, the question is: How can one, without belonging to any tradition, without acknowledging any precedents, without adhering to any values, ground those value judgments which would complete the task of constructing a rational theory of justice? Perelman's answer to this question is not simply that one can't. His response is that the question betrays deep misunderstandings about what reasoning is, deep misunderstandings about what makes the question itself possible. The question is analogous to asking someone to build a house simply by thinking about it, without using any of the available materials that have been used to construct any houses that actually exist.

The principle of inertia puts the philosopher of reason back into the world, a world rich with precedents, full of decisions that have actually been made, a world ordered already by substantive decisions about when actions and situations are and are not alike. This is true not only of juridical matters, in which laws and customs and regulations are assumed to be just by the mere fact of their existence, but it is true, too, of the way past decisions and judgments within families and friendships and organizations work by inertially powered presumptions of equity to make reasoning possible in accord with the rule of justice.

5. The Argument of *The New Rhetoric*

However, not only does presumption play this central role within the theory of argumentation that *The New Rhetoric* offers; it also plays a central role in *The New Rhetoric's* own basic argument. Recall that Gaskins charged that *The New Rhetoric's* argument was primarily an argument from ignorance, one based on inferences from negative assertions--since formal logic cannot solve practical problems of reasoning, then rhetoric is the right approach. Since

dogmatism and skepticism have intolerable practical consequences, we should follow the path of the rhetorical tradition to return to reason. These are simply not Perelman's main arguments. Rather, he takes the limits of formal reasoning and the undesirability of skepticism and dogmatism as givens. They occupy him only for a short time at the beginning of his treatise as a way of accounting for the motivations of *The New Rhetoric*. The real question is: given the limitations of formal logic and the undesirable consequences of dogmatism and skepticism--all fully evident in the postwar milieu out of which Perelman wrote--what is the alternative? Is there an alternative? The burden of argument in *The New Rhetoric* is showing that there is such an alternative.

But how does the argument proceed? Does Perelman use a strategy for which he himself cannot account, as Gaskins charges? Perelman set out to answer a question which was formulated within a positivist framework: how can one justify value judgments by starting from a position in which one is strictly uncommitted to any values? Is it possible to develop or discover a logic of value judgments which would allow assertions of value to be logically justified? Perelman and Olbrechts-Tyteca failed to discover such a logic, and Perelman abandoned the question. This, I think, is the critical moment in Perelman's intellectual development, for Perelman is abandoning not simply a question, but an argumentative community, a conception of which people share his basic aspirations--his judgment about which facts are important, which values deserve our adherence, who the universal audience really is. In the early part of his career, his argumentative community was made up of logicians and philosophers--people committed to universality in a very strict way, but people who tried to position themselves as thinkers, outside of any tradition, apart from common sense and everyday practices, people who would construct the world rationally, from the ground up. I believe that Perelman shared their aspiration for universality because he saw the achievement of this universality as the primary alternative to violence. The renunciation of violence and the desire for peace were, I think, his most consistent principles and desires. However, he came to abandon this community because it achieved what universality it did, what non-violence it did, only at the cost of forsaking any reasoning about those issues concerning which human beings really do come to violence.

It is significant, I think, that Perelman's 1945 positivist essay, *De La Justice*, which runs 60 pages in its English translation, contains references to only 8 other writers, and a few more titles. The only citation which is more than 15 years old is to Proudhon--1868. Except for one reference to C.L. Stevenson and one to a German writer, they are all to French language writers. In the first 60 pages of *The New Rhetoric*, we find 116 citations--Descartes, Mill, Pascal, Leibniz, Whately, Aristotle, Plato, Hollingworth, Lewis Carrol, Cassirer, Bacon, Bruner, Cicero, Quintilian, Sterne, Vico, Demosthenes, Petronius, Husserl--and these are not even all the names from the notes on the first 26 pages. Neither are those the most citation-dense pages of the book--those lie in part three, where the reasoning is almost strictly by example, and where there are 244 notes in the second chapter alone.

The New Rhetoric is a very different kind of work from *De La Justice*--but that is the point. It is not an accident that the book argues by example. Perelman is not simply in search of techniques of reasoning which can be described in a quasi-formal way and presented as parts of a discursive system. He is in search of new fellow-aspirants--a tradition in which the renunciation of violence and the aspiration for an expansive, inclusive human community--the aspiration for universality--is real. Remember that for Perelman and Olbrechts-Tyteca, argument by example is used not simply to clarify or support a pre-existing assertion; that is the role of illustrations. Rather, examples are used to establish a rule. The wealth of examples in *The New Rhetoric* is meant to establish the entire case. The examples as a whole represent the community to which Perelman turned when he abandoned the positivist question. The argument of *The New Rhetoric* is that a concrete tradition of reasoning about difficult practical issues already surrounds us, that it is an orderly tradition, and its framework and starting points and techniques of argumentation can be understood.

Perelman came to reject the claim that the rule of justice could not be applied since precedents could not be justified. He came to see that the audience that believed that there were no precedents, no already existing agreements about values, was something of a chimera, a figment of the imaginations of a community which misunderstood itself--in other words, a view to which only a very particular and rather peculiar audience would adhere. And he projected himself into a community in which there was a rich store of values and precedents. His discovery was that there was a profound history of people who shared his aspiration for universality and his rejection of violence. It became for Perelman a fact that people simply do often settle their disputes non-violently, through reasoning. They do succeed in coming together by way of a common conception of what is good for human beings.

And the fact became that there was also a trans-cultural, trans-historical tradition of people who tried to account for how this happens--and who aspired for agreement with one another, too. Both of these groups serve as Perelman's examples in *The New Rhetoric*; they are representatives of a community of aspirers: people who aspire to human solidarity in small and large ways, people who understand reasoning as a branch of justice, a domain in which utterances are treated fairly. The real story is that Perelman decided to keep company with these new interlocutors, to join them in an inertial frame of reference, to attempt to win for them the presumption.

Considered from a very general point of view, one might charge that Perelman's overall argument is circular. He set out to develop a concept of justice, but it failed because of its formality, its inability to decide concrete cases without issuing in valuing judgments. However, he finds in the quasi-natural fact of inertia a grounding for presumption and for the rule of justice, which underlies our ability to measure the strength of arguments, to distinguish between mere effectiveness and genuine rational strength. Inertia also guarantees the legitimacy of precedents, their continuing inertial force even

over discontinuities of space and time, in the special time of social memory, or the memory of a moral or rational community. That is, judgments about justice are possible only because some community already knows what justice is, already has precedents that allow presumption to function.

Our judgment about whether Perelman's circular reasoning is vicious or not, would, if we accepted his own account, be based on a judgment about whether the circle was drawn widely enough, whether the argumentative community for which he abandoned positivism is inclusive enough, whether it can answer the objections that might be made about its exclusiveness, whether we can ourselves aspire to some solidarity with it. The particular character of *The New Rhetoric's* aspiration to solidarity, its particular conception of the universal audience, may be found in its examples. They establish the case. If they are taken to represent a narrow range of interests, then one will see the circle from the theory of justice to *The New Rhetoric* and back as a vicious one. I think Perelman would admit that he is aligning himself in a strong way with a community that aspires to human solidarity and hopes progressively to eliminate violence from human relations. That is, his defense of his intellectual work would rest on ethical grounds. In the end, then the most serious criticism one could make of Perelman's career and his writings would be that he had misjudged the aspirations of that community with which he allied himself. However, in my judgment, the burden of proof would rest with the one who makes that charge--not because Perelman has succeeded in irrationally shifting the burden during a period of social dissolution--as Gaskins might suggest--but because he has collected and successfully given an account of a convincing number of argumentative techniques that have in fact allowed people to avoid violence and dogmatism in settling conflicts.

One difficulty with which Perelman concerned himself after *The New Rhetoric* was not giving presumption its proper due, as Gaskins would recommend, but the opposite: trying to explain how in the presence of the powerful inertia that governs reason it is possible to believe that one can ever move beyond the conservatism and what Perelman regarded as the sometimes unjust force of inertia. In the 1964 Genoa lectures, in the lecture on "Justice and Justification," he asks: "Is it possible in the practical realm to transcend the aspirations of a political community?" (Perelman 1967: 70)

In the concluding Genoa lecture, on "Justice and Reason," Perelman connects this question to the question of whether or not there is such a thing as a philosopher's mission--that is, whether it is possible to reason convincingly in a way that goes beyond simply reaffirming presumptions. Perelman draws his conception of philosophy from Husserl, the Husserl who wrote that "philosophers are the civil servants of humanity." Legislators and judges have to make and apply law in a way that conforms to the presumptions of the political community, but philosophers, says Perelman, must formulate just laws and judge according to those laws not for a given society or group but for the whole of humanity. This puts enormous strains on Perelman's central concepts of universality, inertia and justice, but these are just the matters that Perelman

judged to need addressing after finishing *The New Rhetoric*, in which the concepts of inertia, presumption and precedent play such significant roles.

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