



***Presumptions and Burdens of Proof. An Anthology of Argumentation and the Law.* ed. by H. V. Hansen, F. J. Kauffeld, J. B. Freeman, and L. Bermejo-Luque. Tuscaloosa: University of Alabama Press, 2019**

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According to a long tradition in the history of philosophy and legal thought, there is a close relationship between *presumptions* and the *burden of proof* in a discussion or judicial process. A well-known example is the presumption of innocence in criminal law. This presumption implies that someone is innocent until proven otherwise and the burden of proof rests with the party who is accusing someone. Another good example is the discussion about the existence of God. An atheist may argue that, based on the presumption that we don't have any empirical evidence for the existence of God, someone who defends this existence has the burden of proof.

This long tradition has raised and continues to raise numerous theoretical and practical questions about presumptions and the burden of proof and the relation between these two concepts. What exactly are presumptions? Are presumptions empirical, epistemological or normative concepts? Are presumptions related to statements or to forms of reasoning? What exactly is the burden of proof in an ideal discussion and in practical discussions in institutional contexts? To what extent can legal norms for the division of the burden of proof serve as a model for non-legal discussions?

In the history of philosophical and legal research, various answers have been given to these questions over the centuries. The interesting publication *Presumptions and Burdens of Proof. An anthology of argumentation and the law* aims to provide insight into the development of this thinking by bringing classical and modern texts together in a systematic context. This systematic context is broadly spoken philosophy, law and modern argumentation theory. The first publication in this anthology is the fragment 'Dialectical Propositions' from Aristotle's *Topics*. The *most* recent one—'On the Relationship between Presumptions and Burdens of Proof' (2019)—is written by one of the editors of this book Lilian Bermejo-Luque. A comparison of these two texts shows that, in addition to many points of discussion, there is also

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a clear consensus on many aspects of presumptions and the burden of proof. In short: presumptions are—in modern terms—*defeasible* statements in the dialectical context of critical discussion in which discussants try to convince each other with acceptable arguments (although there are also authors who depart from a rhetorical context).

Presumptions and Burdens of Proof is divided in two parts. The first part contains canonical texts from among others Aristotle, Bentham, Whately and Sidgwick. This first volume also contains an interesting historical contribution by Hans Hohmann. Hohmann shows in 'Presumptions in Legal Argumentation. From Antiquity to Middle Ages' that empirical and normative considerations are closely related in legal thinking about presumptions. In his insightful introduction to this historical part, editor Hans V. Hansen examines the development of the discussion about presumptions and the burden of proof.

Hansen concludes this introduction with some general observations. In the historical essays the following norms for the burden of proof have been proposed: the burden belongs to: (1) the assertor, (2) whoever holds the affirmative thesis, (3) the party for whom it would be easiest to provide evidence, (4) the party opposing the presumptive view, (5) the party who would lose the case if the outcome had to be decided at his point (6) the party who has the burden according to the law. Hansen observes that the distinction between legal and non-legal presumptions and the discussions about normative, empirical and epistemological aspects are a central point of debate since Bentham's publications. Hansen concludes with the more overall observation that the 'study of the notions of presumption and burden of proof confirms the thesis that argumentation discourse essentially involves an intermingling of factual and normative considerations.'

The second part of *Presumptions and Burdens of Proof* consists of a collection of contemporary essays by contributors from the fields of law, philosophy, rhetoric, and argumentation and communication theory. In the introduction to the contemporary part, the editors start with the observation that there is a broad consensus about the conceptions of presumption and burden of proof. By way of a short summary they quote Nicholas Rescher, one of the founding fathers in the modern theory of this topic: 'The workings of the conception of the burden of proof represent a *procedural or regulative principle of rationality* in the conduct of argumentation, a ground rule, as it were, of the process of rational controversy—a fundamental condition of the whole enterprise.' But, the editors argue, beyond this consensus, there are many different research questions, perspectives and answers. There are differences of opinion to the status of the 'burdens' of parties in a discussion. There are authors who follow Whately's line: the burden of proof is linked to presumptions and from that follows a variety of burdens of proof. Others start from the general maxim 'the one who asserts must prove' and relate this to communication principles (Grice) and conditions for speech acts (Searle). Deviations from the ideal situation are explained from the specific requirements of an institutional context, such as legal discussions. Related to these different starting points there are differences between dialectical and rhetorical approaches. The dialectical approaches opt for the rationality in formal models of argumentation and communication. Rhetorical approaches in contrast focus on the 'messier world of day-to-day' arguments.

But, I think, these differences are gradual rather than fundamental. Certain starting points of Aristotle's analysis remain intact in all contributions. Both in dialectical and rhetorical settings the rationality and the reasonableness of presumptions and the burden of proof play an important role. Let's go back to the discussion of the existence of God. No one could convince the empiricist Bertrand Russel that God exists. 'Suppose now', he was asked, 'that God *does* exist, and that God will question your disbelief'. 'Well', Russel answered, 'I will say that God gave me too little evidence'.

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