

# ISSA Proceedings 2002 - The Ordinary Practice Of Presuming And Presumption With Special Attention To Veracity And The Burden Of Proof



## 1. Introduction.

This paper offers an analysis of our ordinary concepts of *presuming* and *presumption* and of their corresponding everyday practices. Scholars encounter 'presumption' in several contexts: the lexicon of the law, as a term of art in studies of argumentation and rhetoric, and occasionally in philosophical discussions. In addition to these technical ideas of presumption, as ordinary persons we share plain senses for these terms, and we commonly engage in practices which can truthfully be reported using 'presuming' and 'presumption' in their everyday meaning. This essay concerns the commonsense concepts which ordinary language attaches to these terms.

Scholars agree that presumptions figure importantly in thought and speech, and many have called for further study of the topic (Blair, 1980, 2-3; Cronkhite, 1966, 270; Flew, 1976, 16-23; Rescher, 1977, 28-36; Ullmann-Margalit, 1983, 43; Walton, 1996, 17-18). However, few have investigated presumption from the vantage afforded by our ordinary concepts. Presumption was initially introduced into argumentation and communication theory by Richard Whately as a concept borrowed from the vocabulary of jurists (1963, 112-13). Subsequent scholarship has favored his approach. Ullmann-Margalit is representative.

*Explication is usually guided by the pre-systematic, everyday usages of the notion under consideration. In the present instance, however, it seems to me that the ordinary-language analysis of the notion of presumption ... will not get us very far. Guidance in the present case is to be sought rather in the realm of the law (1983, 144).*

While granting priority to analysis of ordinary concepts, this philosopher nevertheless develops an account of presumption based on technical legal

concepts, without a glance in the direction of plain understanding and practice. Jurists have made critically important contributions to our understanding of the work presumptions can do in argumentation, but our studies ought also be informed by an understanding of the ordinary act of presuming. To develop this theme, I will first critically examine the conception of presumption scholars have constructed by borrowing from the law; I will then offer an analysis of presumption as plainly understood; and, finally, I will indicate some light which ordinary conceptions throw on problems of continuing interest to students of argumentation. Ordinary ideas about presumption may well need improvement, but they arise at a rich nexus in our day-to-day affairs, and, as J. L. Austin famously taught, they comprise an indispensable starting point for inquiry (1961, 133).

## *2. Whatelian Conceptions of Presumption*

In the following I refer to prevailing scholarly ideas about presumption as “Whatelian conceptions.” This idiom glosses over some areas disagreement and delineates a concept somewhat clearer than Whately’s own account of the topic. Nevertheless, the title conveniently recognizes the priority of his contribution. Whatelian ideas about presumption are unified by their reliance on legal conceptions. Modeled on the codification of legal argumentation, they identify presumptions as a special kind of inference, based only in part on evidence related to the truth of the inferred proposition and grounded largely on considerations related to the context or circumstances in which the inference is drawn. Presumptive inferences, in this view, are distinguished, not by the truth of their conclusions as warranted by relevant substantive facts, but by the unique strength or force of the inferred conclusion, viz., it is to be accepted unless and until substantiated counter-arguments are adduced against it[i]. At their core Whatelian conceptions define presumptions in relationship to the burden of proof: a presumption, the conclusion draw in an inferential act of presuming, stands good until rebutted by parties who undertake an obligation to provide substantiated objection to its acceptance. Finally, according to Whatelian views, presumptions are inferences which, in the appropriate circumstances and given the appropriate facts, relevant persons are *entitled* to draw; the burden of proof which falls on persons who refuse to accept a warranted presumption is in the nature of an obligation.

This technical formulation can be illustrated by the presumption thought by some

to favor the status quo. Whately teaches that just as jurists recognize a presumption favoring the accused's innocence, so, too, elsewhere a presumption supports existing institutions, policies, and generally accepted beliefs. Suppose a ban on testing nuclear weapons is the established national policy. Given that fact, in Whately's view, relevant parties are entitled to infer that this is a satisfactory policy, unless and until parties opposed to the ban show that it should be lifted. Presumptive inferences favoring the status quo are not based *directly* on reason and evidence purporting to show, e. g., that a test ban is the best policy; rather they rest primarily on data related to the circumstances in which the inference is drawn, e. g., the fact that a prohibition is the status quo. Nor does this presumptive inference warrant the conclusion that such a ban is the best or probably the best policy. As Whately notes, it may well be that a better policy could be found. But relevant parties are entitled to presume that the test ban is satisfactory, and persons who would deny that have the burden of proof. Of course, whether a presumption favoring the status quo properly obtains and, if so, under what circumstances are matters of longstanding controversy (Goodnight, 1980, 304-337; Marsh, 1964, 46-53).

Whatelian conceptions of presumption have, I will argue, two deep infirmities: (1) the conditions which define *presumption* as a received term of art, while similar to our ordinary notions in important respects, are neither necessary nor sufficient to *presumption* in its plain sense, and (2) Whatelian conceptions do not satisfactorily identify what warrants presumptive inferences. It follows that received scholarly conceptions enable us to identify some, but not all, ordinary presumptions; they incline us to regard as presumptions some inferences which ordinarily would not count as such; and, what may be worse, Whatelian conceptions do not clearly identify an essential component of this mode of inference.

Let us begin with some ways in which technical conceptions of presumption concur with our ordinary notions. Notice first that *received scholarly conceptions, legal definitions, and commonsense broadly agree that presumptions are a kind of inference.*

On this point jurists are unanimous. As the legal theorists Morton and Hutchison observe, "A presumption occurs when we make a connection between two sets of circumstances such that upon proof of the first set we will believe (and more importantly *act as if we believe*) the second set also to be proved" (1987,11)[ii]. On this important point legal conceptions roughly fit plain day-to-day practices.

To presume something in the course of ordinary thought or conversation is to take it in the broad sense of *mentally taking* which includes *assuming, inferring, concluding, etc* (*Oxford English Dictionary's* entries for 'take' 46-51). In place of, 'Dr. Livingstone, I presume', Stanley might well have said 'Dr. Livingstone, I take it'. Generally 'take' may be substituted for 'presume' with little distortion in the truth of the utterance paraphrased, though the original utterance will have been more precise. The anomalous character of such utterances as \*'I presume that he speaks the truth, but I do not take it that he does' shows that *taking* is essential to *presuming*. A presumption is simply the conclusion taken (or available for the taking) in an act of *presuming*. We also speak of our reason for presuming this or that, and it would be odd to say \*'Without having any basis for it, I presume that he will arrive at seven'. Although there are some differences in the status scholars assign to presumptions, today most agree with commonsense and the law in treating presumptions as inferences.

A second parallel is that *both Whatelian conceptions and ordinary practice* accord normative status to presumptions; both *recognize that presumptions are related to the distribution of responsibilities, rights, and obligation in conversations, dialogues, discourses, and other human interactions*. Whately, himself, is tolerably clear about this point. He takes the defining mark of presumption to be the strength of the presumptive conclusion which "must stand good till some sufficient reason is adduced against it" (1963, 112). By this Whately patently means that persons who would challenge a presumable proposition have an obligation to take up the burden of substantiating their position; *they can be called upon* to support their views, reason and evidence *can be demanded* of them (1963, 112-14). Advocates who enjoy the support of a presumption may find it expedient to provide support for their views, but they are under no obligation to do so (116). Unfortunately some rhetorical theorists fail to clearly grasp this aspect of presumption and speak of the burden of proof as simply a practical, and not a necessarily normative, matter (Cronkhite, 1966, 272-73; Sproule, 1976). But scholars who have thought deeply about the matter recognize that presumptions have a basis in responsibilities and rights. In this respect enlightened Whatelian accounts tend to be in accord with the nature of commonsense presuming.

Connections to normative considerations can be seen across a variety of ordinary presumptions. The presumption that a person is speaking the truth is related to our supposition that she is responsible for the truth of what she says. Likewise, when we presume that we are welcome at an event to which we have been

invited, our supposition is related to obligations incurred when the invitation was tendered. When we presume something, we take it as something we are entitled to infer, and this entitlement comes with expectations regarding the responsibilities of others. Correspondingly, when someone behaves presumptuously, in the pejorative sense of the term, that person's actions lay claim to something to which he or she is not entitled.

While Whatelians agree with commonsense in identifying presumptions as inferences that have a normative bearing, they diverge from our plain understanding and practice in what they regard as the defining feature of presumptions. For Whately and for most subsequent scholars, the essential feature of presumptive inference is the strength or force of its conclusion: a presumption stands good unless and until it is rebutted by substantial reason and evidence (Baird, 1950; Cronkhite, 1966, 271-5; Eemeren & Grootendorst, 1992, 120-121; Ehninger, 1959, 83-84; Flew, 1984; Gaskins, 1992, 267-69; Goodnight, 1980, 312-14; Hill & Leeman, 1997, 141-43; Perelman & Olbrechts-Tyteca, 1969, 71; Rescher, 1977, 28-34; Sproule, 1976; Ullmann-Margalit, 1983, 147-52; Walton, 1996, 18-20; Willard, 1983, 131). Granted, a burden of proof is ordinarily *associated* with *some* presumptions, e.g., were a person to make a proposal, it would be presumed that what she had to say might prove to be of interest, and the proposer would incur a related probative obligation. However, outside the courts, the strength which Whatelians take to be the identifying mark of presumption is neither a necessary nor a sufficient condition for the truth of reports that something has been or could be presumed. It is not hard to find ordinary presumptions that do not have this strength, and it is also possible to find inferences which do have that strength but are not presumptions.

The presumption of veracity is a good example of a presumption which does not have the strength received technical conceptions assign to this type of inference. If Smith says (speaking seriously) that he will be home by seven, one would ordinarily presume that he is making a reasonable effort to speak the truth. But this presumption does not stand good until overturned by someone who accepts the burden of proof. Were Smith's wife to respond 'No, you won't', we would not be inclined to suppose that she had incurred a probative obligation. Pressed to defend her denial, she might well answer with no more than 'I know what I'm talking about, and I am not going to give any further attention to this matter'. Her behavior might seem less than fully cooperative, but there are no probative duties here which she has failed to discharge. Or, to muster a second example, suppose

Smith advises Jones to invest in Northwest Securities. Here there is reason to presume that he is speaking out of regard for Jones's welfare. However, Jones can reject that presumption out of hand without incurring a probative burden. It simply is not the case that ordinary presumptions generally have the weight or force which Whatelians assign to them. So, if we are guided by Whatelian definitions, we would succeed in recognizing some ordinary presumptions, but others will escape our attention.

Argumentation theorists might object that their interests are adequately served by a Whatelian focus on those presumptions which are related to probative obligations. This objection rests on suppositions which are premature and probably mistaken. What sorts of presumptions figure significantly in argumentation is a matter to be determined by investigation, not by conceptual fiat, and it seems apparent that at least one presumption which does not stand in a Whatelian relationship to the burden of proof, the presumption of veracity, is of considerable interest to argumentation theorists. More importantly, this objection implies that the strength Whatelians assign to presumptive conclusions suffices to identify a subset of presumptions - those thought to be of special interest to students of argumentation. Proponents of this idea would be committed to the unfortunate view that whenever one of several parties has the burden of substantiating some proposition, a corresponding presumption favors the contradictory or contrary of that proposition. However, persons commonly incur burdens of proof in the absence of any clear presumption favoring a contrary or contradictory proposition. We routinely require undergraduates to produce essays in which they defend a position, and so have a burden of proof, but we do not commonly expect them to challenge a presumptively satisfactory proposition. Similarly, committees may be assigned to investigate matters and report recommendations with supporting argumentation regardless of whether there is a presumption favoring alternative recommendations. Or a police officer, interrogating a suspect who has confessed to a crime, may doubt the veracity of the confession and may properly conduct her questioning on the supposition that the suspect has the burden of proof, but in this case there seems to be no clear presumption to the effect that the confession is false. Whatelian conceptions fail to specify a condition sufficient to identifying members of a subclass of presumptive inferences. Insofar as we rely strictly on Whatelian definitions, some of the suppositions that we take to be presumptions would not ordinarily qualify as instances of that kind of inference.

The analytical poverty of Whatelian conceptions is also apparent from their construction (Blair, 1980). They represent presumptions as conclusions which have a distinctive strength or force: presumptions impose a burden of proof on those who do not accept them. However, in order to recognize presumptions and to appropriately presume things, one needs to know when a conclusion of this kind would be order. What grounds and principles of inference warrant a presumptive conclusion? We would regard this as a proper question to ask about other kinds of inference. We would expect an analysis of causal reasoning to characterize the principle(s) of reasoning capable of warranting a causal conclusion and, also, the grounds on which such conclusions can be drawn (Hart & Honore, 1959, 8-58). We would hold the same expectation for analyses of inferences by sign, analogy, generalization, and so on. The rules of evidence in law do more than specify the strength of presumptive inferences, they also stipulate the grounds for various legal presumptions. In law presumptions are warranted by corresponding rules. What are the grounds and principles of reason that *generally* warrant presumptive inferences in the conduct of day-to-day thought and discourse?

Whately offers no clear answer to this question. He points to several grounds which warrant various presumptions: fairness (1963, 115, 117, 124, 126, 128), eminent authority (128), persistent good judgment (120), the collective agreement of a council or assembly (123), and the first appearance of truth regarding a proposition (131). He also notes that there are reasonable presumptions against any restriction (125) and against practices which have fallen into neglect (127). But Whately makes no effort to identify what these various grounds for presumption have in common or to otherwise identify the essential basis for this broad class of inferences. Subsequent scholarship has turned up a number of potential warrants for presumptive inferences. Chaim Perelman and L. Olbrechts-Tyteca's hold that presumptive inferences are based on suppositions about what is normal and likely (1969, 71). Nicholas Rescher maintains that presumptions are warranted by their plausibility (1977, 37-41). Others have suggested that presumptions are to be rationally assigned on the basis of risk and the normative acceptability of error (Goodnight, 1980, 315-16; Ullmann-Margalit, 1983, 157-59). Doubtless, some ordinary presumptions are warranted by each of these considerations, but none identify the essential basis for plain presumptive inferences. Given appropriate circumstances, each may ordinarily also serve as the basis for inferences which are not presumptive. More

specifically, the various considerations which scholars have put forward as the distinctive grounds for presumptive inferences would in many cases also be taken by laymen as basis for assumptions.

Assumptions and presumptions are similar in a several key respects. Both are based, at least in part, on suppositions about inferential context; neither directly rests just on substantive grounds for the truth of the conclusions drawn. If we see the mailman approaching our domicile with letters in hand, we may infer that the mail is about to be delivered, but it would be a joke to describe this inference as an assumption and pretentious to call it a presumption. Here the strong substantive basis for the inference precludes the sorts of considerations which lead to assumptions and presumptions (which is not to deny that such suppositions might be lurking in the background of our substantive inference). Also, the kinds of considerations which in some cases warrant presumptions may in other cases serve as the bases for assumptions. If the occurrence of a certain event is known to be very probable, in dealing with others who share this knowledge one might assume that the event is going to occur, but in some circumstances, one might as well presume that it is going to happen. And here we also see a third similarity between presumptions and assumptions, sometimes these forms of inference may lead to much the same conclusion. Any good taxonomy of inferences would classify assumptions and presumptions as very close neighbors - subsets of the larger class of suppositions grounded (partially) on contextual considerations[**iii**].

Nevertheless, assumptions and presumptions are distinct kinds of inference. Their categorical difference is apparent from the contrasting ways they can be described and evaluated (Kauffeld, 1995, 158-172; Llewelyn, 1962, 163). Assumptions do not have force or strength; it seems odd to speak of a \*'strong' or \*'powerful assumption' in favor of something, nor would one seriously and literally compare the force of various assumptions. We assess assumptions as 'safe' or 'risky'. Presumptions, on the other hand, may have force and strength; it is natural to speak of a 'weighty presumption', and there is nothing odd about the idea of presumptions outweighing each other. It follows that adequate analysis of presumptions ought to show how the basis for this kind inference ordinarily differs from the kind of considerations which plainly warrant assumptions.

Unfortunately, the several warrants for presumptive inference articulated by Whately, and by other scholars who have similarly modeled their thinking on legal



conceptions, fail this test; they do not suffice to differentiate between assumptions and presumptions. Considerations pertaining to fairness, eminent authority, persistent good judgment, manifest truth, what is normal and likely, plausibility, risk and tolerance for error, all these kinds of consideration might ordinarily serve as bases for either assumptions or presumptions. Whatelian conceptions, in short, fail to provide a satisfactory view of what essentially warrants presumptions in day-to-day affairs.

The merits and infirmities of Whatelian conceptions of presumption are mirrored in the ways studies of argumentation have profited from their use. It should come as no surprise that they have been found useful in areas of research and pedagogy which readily admit of rules positing or stipulating presumptions that govern probative responsibilities. Thus, Whatelian presumptions have been put to work in the construction of dialogues designed to model argumentation subject to regulation under idealized conditions (Rescher, 1977; Walton, 1996). Similarly, Whatelian conceptions of presumption have served as the framework for structuring competitive student debates (Ehninger & Brockriede, 1966; Hill & Leeman, 1997). These applications of the concept share with courtroom argumentation the possibility of establishing rules which prescribe presumptive inferences and allocate probative obligations. However, when we attempt to move from these rather rarified and regulated contexts to argumentation and discourse in the larger world of practical affairs, we encounter limitations due to the infirmities of Whatelian conceptions. As pragma-dialectical approaches to the study of argumentation suggest, we should be able to see how a speaker's probative obligations are related to the larger set of responsibilities speakers incur in serious efforts to communicate (Eemeren & Grootendorst, 1990, 6-17). Conceptions of presumption which diverge widely from ordinary practices of presuming cast limited light on, e.g., the connections between the responsibilities speakers have for the veracity of their utterances and the obligations they may incur to argumentatively defend what they say. Or, to look at the matter from another angle, we have to account for how argumentation works under less than ideal circumstances, in a world of practical affairs not routinely subject to stipulation and regulation. If our ideas about presumption are to be of help in analyzing and evaluating real world arguments, they need to illuminate how probative responsibilities are incurred in practical argumentation. Conceptions of presumption which fail to identify what generally warrants presumptive inference are ill suited to this task.

### 3. *The Essentials of Presuming*

What, then, in ordinary day-to-day thought and discourse is a presumption? And more specifically, what distinguishes this kind of inference from other kinds of inferring? These questions call for analysis of the cognate term with special attention to its coordinate verb *presume*. Whatever *presumptions* are, we certainly take them in acts which can in truth be described as *presuming something*. So, if we determine the truth conditions, i. e., the semantics, of *presume*, we may infer the essential constituents of acts of presuming, and by that route we may come to identify what presumptions are and the grounds on which they may legitimately be taken[iv].

Ordinary presumptive inferences have a definite form. In the plain sense of the term, *to presume that p* is to take that *p* on the grounds that someone will have made that the case rather than risk criticism, painful regret, reprobation, lose of esteem or even punishment for failing to do so. The superior presumes that his subordinate will comply rather than risk reprobation for disobedience. The wife presumes that her husband will pick up her mother; 'He would not dare forget that' she says. Smith might presume upon his friendship with Jones by entering the latter's home, expecting Jones to acquiesce rather than suffer Smith's resentment upon being expelled. Where practical considerations preclude relevant calculations based on the risk of resentment, it is hard to see how one can in truth speak of a person's presuming something. If it is known that there is no chance of effective disapproval and resentment, we could not seriously and literally speak of presuming something. Were one were to say \*'Smith knows that no one will be upset or bothered if he is late, and it certainly would not cause him any regret, so I presume that he will arrive on time', one would have packed a somewhat ironic sense into one's use of 'presume'.

In presuming that *p* a person comes to hold that *p* by reason of the supposition that some person has or will have made it the case that *p* rather than risk resentment for acting otherwise. Presumptions start as propositions which can be made true by what someone does. If Jones says that the game will begin at seven, we may presume that he has made a responsible effort to speak the truth in view of the risk he runs of criticism for failing to do so. Here what is presumed is the proposition that Jones is speaking truthfully. Derivatively we may also presume that the game will start at seven.

The calculations about resentment which lie at the heart of presumption draw on a wide range of considerations. In paradigm cases resentment is the pain, indignation, or agitation felt because of a wrong done to oneself and/or one's

fellows. The primary cases of resentment are instances in which *A* believes that *B* has wronged *A* or *A*'s fellows, and *A* thereupon feels pain, indignation, etc[**v**]. But regret is also a form of resentment. When prudent persons calculate the risk that their actions may cause resentment, they include the prospect that they would regret, e.g., a wrong which tarnishes their character. While the primary examples in which persons calculate a risk of resentment involve the possibility of causing persons to experience pain, indignation, etc., often it is not essential that they might actually undergo such feelings. In many cases, we calculate resentment where the action in question is merely of a kind which could cause persons to feel wronged, injured, upset, etc. There may be a risk of resentment in lying to people, whether or no they are likely to become emotionally upset by the deception. The risk of resentment ranges over the attitudes and behavior which express resentment: sullen anger and indignation, severe retribution and punishment. One chances resentment by acting in ways which may be believed to be wrongful and thus are kinds of behavior which can cause pain and evoke a retributive response.

Presumptions comprise a large class of inferences, generating a many of the expectations and suppositions we form about the conduct of persons. This fact is reflected in the idioms used to identify presumptions, e.g., 'He/she would not dare to (do anything so outrageous as ...)'. Here one recognizes the familiar form of an inference taken by reason of the risk of resentment. Similarly, a teacher might confidently expect students in her classes to turn their papers in on time, and when asked the grounds for her apparent optimism, she might reply 'They wouldn't dare turn them in late; I dock tardy papers a full letter grade and accept no excuses'. In other situations we mark out presumptions with expressions that identify our expectation that a person would not be willing to bear this guilt or that anxiety. These examples serve as reminders that presumptions pervade our lives.

Presumptions are inferences persons make-and can be expected to be make-about each other's conduct, so they are subject to certain abuses. Accordingly, we have a sense of the term 'presumptuous' which designates brash and insolent uses of this form of inference. Presumptuous behavior, in the clearest cases of such effrontery, consists of conduct which is offensive but which the offender expects will be tolerated because no one will dare to give effective expression their own displeasure in view of the prospect that the offender would

react with indignation, etc. Thus we regard abusive presumptuous behavior as 'insolent' and 'high handed' and we ask of it 'How does he expect to get away with that?' or 'Just who does she think she is?' or 'How dare she?'

Supposing that the preceding analysis articulates conditions essential to presuming and presumption, does it suffice to identify instances of this type of inference and to distinguish them from other modes of inferring? Several considerations argue for an affirmative answer. It would be odd to affirm that one's partner would be unwilling to risk resentment of an appropriate caliber and still refuse to take the corresponding presumption concerning that partner's behavior. One would pause were one told \*'Mary said she would be here by seven; we know she cannot stand the thought of being late; still I would not take it (would not presume) that she will be on time'. Perhaps this is not a head-on contradiction, but one could hardly make sense of this utterance without supposing that some further, unspecified conditions, render problematic Mary's arrival at the designated time, e. g., unknown to her, the public transit on which she depends has broken down.

The power of our analysis is also shown by its capacity to distinguish between presumptions and assumptions in terms which fit the differences between these modes of inference noted above. In presuming, a conclusion is taken on the supposition that so and so would see to the truth of the inferred proposition rather than risk resentment for failing to do so. Assumptions, on the other hand, are inferred on the supposition that in the circumstances at hand no relevant party or fact is likely to trouble the inferred conclusion. Accordingly, we describe *assumptions* as suppositions 'taken for granted'. This belief that a supposition is uncontroversial - that everything argues for it and nothing against - is something 'we take upon ourselves'. If we are in error and others challenge our assumption, the grounds on which it immediately rests provide little basis for responding to the challenge. So assumptions do not, themselves, have strength or force. On the other hand, we regard *presumptions* as suppositions 'we are entitled to' because it is incumbent upon someone else to make them true. Consequently, presumptions may have force; failure to concur in a presumption may occasion criticism and resentment[**vi**].

When approaching the roles which presumptions play in discourse and argumentation, it is useful to distinguish between

1. *standing presumptions*, which are generally available on the supposition that

prudent associates will avoid occasioning foreseeable resentment, and

2. *special presumptions*, which an agent deliberately generates by providing others with grounds to presume things favorable to that agent's ends and projects. Standing presumptions are based on shared beliefs about what constitutes right and proper conduct and on the supposition that our associates are mature and prudent persons. For example, in the absence of indications to the contrary we presume self-reliance on the part of our associates, because we suppose that they would not risk the condescension and loss of respect which foreseeably is directed toward persons who do not exercise a good measure of autonomy (Butler, 1897, 248-51). Other things being equal, this standing presumption is generally available; its warrant does not depend on actions designed to generate the appropriate inference. However, in social intercourse persons do not rely just on the presumptions which are generally at hand. Often a person wants others to presume particular things which promote her ends and projects. Suppose one were trying to borrow an item of value from strangers, one would want them to presume that the object will be promptly returned, but, given the circumstances, one might find it necessary to take specific measures designed to warrant that presumption. So, one might voluntarily post a monetary bond to guarantee punctual return of the object. Such cases show that, persons also recognize special presumptions, which are deliberately engaged by an agent's acting in ways designed to provide others with reason to presume things which promote that agent's projects.

In summary, to presume that  $p$  is to suppose that someone will have made it the case that  $p$ , rather than hazard the resentment which would be occasioned by failing to do so. This analysis marks out a broad class of inferences based on the risk of resentment, and it suffices to distinguish that class of inferences from the neighboring class of assumptions, which are based on the supposition a proposition does not require further thought and/or discussion in the circumstances at hand.

#### *4. Presumptions, Speech Acts, and the Burden of Proof*

It should now be apparent that our ordinary concept of presumption and corresponding inferential practices are sufficiently clear and complex to warrant serious scholarly attention, but it can seem that these "pre-theoretical" ideas diverge so far from received scholarly conceptions as to raise questions about their value in studies of argumentation. More specifically, it might seem that ordinary concepts decouple presumption and burdens of proof and, so, forfeit

interest from argumentation theorists. By way of concluding this essay, I will try to indicate that, on the contrary, our analysis of ordinary presuming enables us to better identify how pertinent obligations are related to presumptions and, so, affords a more perspicuous view of how probative burdens are distributed and function in argumentation.

First, our analysis of presuming supports an account of how argumentatively significant obligations are incurred in a variety of speech acts. In studies of regulated argumentative dialogues, Douglas Walton classifies presumption as a kind of speech act (Walton, 1996; Walton, 1993). As regards ordinary presumptions, this idea would be mistaken. Granted, some acts of presuming may be explicitly performed by saying such things as 'I presume that p'. However, if there is any stuffing to talk about "speech acts," it must be essential to the performance of a speech act that some message source say something (or do something that is virtually equivalent), but ordinary presumptions are often undertaken tacitly, without saying anything. Still, Walton rightly senses that many presumptions of interest to argumentation theorists are generated in the performance of speech acts.

As I have argued in detail elsewhere, a broadly Gricean analysis of utterance-meaning shows that speech acts are performed by speakers deliberately generating special presumptions (Kauffeld, 2001a, 2001b; Stampe, 1967). In the simple case of seriously saying something, a speaker openly undertakes responsibility for the truthfulness of her utterance and, thereby, engages a special presumption of veracity. In speech acts on the order of *proposing* and *accusing*, speakers enlarge their commitment to veracity to include a probative obligation to argumentatively support what they say. By strategically incurring burdens of proof, accusers and proposers generate presumptions favorable to securing consideration for their argumentation (Goodwin, 2001b; Kauffeld, 1998b). In short, a clear understanding of ordinary presumption supports theoretical analysis of how burdens of proof and other argumentatively significant obligations are generated in day-to-day argumentation.

Second, this account of the pragmatics of presumption and probative obligations in speech acts enriches critical interpretation and evaluation of real world public argumentation. Studies of the Lincoln-Douglas Debates, of argumentation in the contest over ratification of the United States Constitution, and of forensic advocacy in the O. J. Simpson trial show that a grasp of ordinary presumptions enables precise interpretation of the strategic genesis of probative burdens in

complex and critically significant public discourses (Goodwin, 2001a; Kauffeld, 1994, 2002). Moreover, since the content of an obligation is often determined by the transaction in which the obligation is undertaken, unpacking the communicative transactions in which probative burdens are generated often reveals what advocates must show to discharge those obligations and gives insight into the persuasive force of their argumentation (Kauffeld, 1998a, 2002). In short, analysis of ordinarily presuming supports close study of the complex connections between presumptions and probative obligations in real world discourse.

I have been arguing that our ordinary concepts of presuming and presumption contribute importantly to studies of argumentation. Part of my discussion has critically essayed scholarly notions about presumptions which derive primarily from the law. I do mean to suggest that argumentation theorists should abandon study of how jurists construe presumptions and probative burdens; on the contrary, I think that more remains to be learned from work by legal scholars (for example, see: Allen, 1994; Gaskins, 1992). But I hope to have shown that analysis of presumption as ordinarily conceived provides correctives to received Whatelian conceptions of this kind of inference and may enable us to better understand the genesis of discursive obligations in real world argumentation. Much work on presumption in argumentation (and discourse generally) remains to be done. We need to understand how presumptive inference can serve as a basis for trust, more study needs to be devoted to the presumptions engaged in specific kinds of speech such as *testifying* and *praising*, and we have just begin to understand the various functions of presumption in defeasible argumentation. But we have now reached the present essay's legislated limits.

## NOTES

**[i]** Here I overlook the fact that legal conceptions generally recognize both rebuttable and non-rebuttable presumptions. I do not, however, underestimate the significance of this fact as it raises serious questions about Whatelian attempts to define 'presumption' in terms of the burden of proof.

**[ii]** The law uses 'presumption' in two distinct ways: (1) as a rule which mandates that certain facts warrant a specific conclusion and (2) as an inference drawn in compliance to such a rule. As Sir Courtney Peregrine Ibert explains, "A presumption in the ordinary sense is an inference... But a legal presumption, or, as it is sometimes called, a presumption of law... is something more. It may be

described, in Stephen's language, as 'a rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence, unless and until the truth' (perhaps it would be better to say 'soundness) 'of the inference is disproved" (1910, 15).

**[iii]** Scott Jacobs suggested in conversation that presumptive inferences may be a particularly strong subset of assumptions. Various considerations argue for this suggestion. For one thing, where a person presumes something, she may also assume that this presumption is in the circumstances a practically sufficient basis for proceeding without further inquiry; here a presumption seems in turn to warrant an assumption. Such complexities might incline one to suppose that presumptions are a subclass of assumptions. I am strongly inclined to suppose that they are, instead, neighboring subclasses of a larger genus, but I am by no means certain as to how to handle their various interactions.

**[iv]** Presuming belongs to a large sub-class of taking. Some kinds of taking are marked by the terms in which what is taken is, or is believed to be, available. Accepting seems to be an example of the acts which fall into this category. One can accept something which is given or offered; however, the thief can hardly be said in literal truth to accept what he takes. Presuming is like accepting in that what is taken, i. e., the presumption, is necessarily available, or is at least supposed to be available, on certain terms. What are they? An answer to this question shows us the grounds which warrant presumptive inferences.

**[v]** I am using 'resentment' in the ordinary sense which encompasses the sense of injury and ill-will persons feel toward the authors of a wrong or affront. In this ordinary sense 'resentment' is the generic term for the negative reactive attitudes persons have toward wrongs done to them and their fellows (Strawson, 1968, 75-80). In a thoughtful discussion, Murphy and Hampton emphasize the personal nature of the injuries which characteristically cause resentment; their account links resentment to wrongs which threaten a person's self-respect or self-esteem (1988, pp. 15-18 and 54-58). While we are certainly prone to resent affronts, in plain usage the category of resentment is somewhat broader including wrongs done to persons with whom we identify at considerable distance. One can resent the wrongs done under apartheid simply on the grounds that they produced severe injury to innocent fellow humans.

**[vi]** Our analysis also illuminates a line along which the grounds for these two modes of inference converge. If all rational creatures believe as a matter of common sense that, e. g., the future will resemble the past, then one might assume that tomorrow will be much like today because no one will be inclined to



dispute this, or one might presume that tomorrow will resemble today because no one would be so foolish as to risk the ridicule that would come from disputing this proposition. Both inferences rest on much the same data: everyone knows that p, but they remain distinct modes of inference because their respective conclusions are warranted on distinct principles of inference.

## REFERENCES

- Allen, R. J. (1994). Burdens of proof, uncertainty, and ambiguity in modern legal discourse. *Harvard journal of law and public policy*, 17(3), 627-647.
- Austin, J. L. (1961). A Plea for excuses, *Philosophical papers*. Oxford: Clarendon Press.
- Baird, A. C. (1950). *Argumentation, discussion and debate*. New York: McGraw-Hill Book Co.
- Blair, C. (1980). *Whately on presumption: A pragmatic interpretation* (Paper). New York City: Speech Communication Association Convention.
- Butler, J. (1897). Dissertation II: Of the nature of virtue. In L. A. Selby-Biggs. (Ed.), *British Moralists* (pp. 245-256). Oxford: Clarendon Press.
- Cronkhite, G. (1966). The locus of presumption. *Central States Speech Journal*, 17(4), 270-276.
- Eemeren, F. H. v., & Grootendorst, R. (1990). Analyzing argumentative discourse. In R. Trapp & J. Schuetz (Eds.), *Perspectives on argumentation* (pp. 86-106). Prospect Heights, IL: Waveland Press.
- Eemeren, F. H. v., & Grootendorst, R. (1992). *Argumentation, communication, and fallacies: A pragma-dialectical perspective*. Hillsdale, NJ: Lawrence Erlbaum Associates.
- Ehninger, D. (1959). Decision by debate: A re-examination. *The Quarterly Journal of Speech*, 45(4), 282-287.
- Ehninger, D., & Brockriede, W. (1966). *Decision by debate*. New York: Dodd, Mead, and Co.
- Flew, A. (1976). *The presumption of atheism and other philosophical essays on God, freedom, and immortality*. London: Eleck/Pemberton.
- Gaskins, R. H. (1992). *Burdens of proof in modern discourse*. New Haven: Yale 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.

- Goodwin, J. (2001a). The noncooperative pragmatics of arguing. In E. Nemeth T. (Ed.), *Pragmatics in 2000: Selected papers from the 7th international pragmatics conference* (Vol. 2, pp. 263-277). Antwerp: International Pragmatics Association.
- Goodwin, J. (2001b). One question, two answers. *Paper presented at the fourth OSSA conference: Argumentation and its applications*. Windsor, Ontario.
- Govier, T. (1997). Arguing forever? Or: Two tiers of argument appraisal. In H. V. Hansen & C. W. Tindale & A. V. Colman (Eds.), *Argumentation and rhetoric: Proceedings of the second OSSA conference*. St. Catherines, Ontario: Brock University.
- Govier, T. (1999). Progress and regress on the dialectical tier. In J. Hoaglund (Ed.), *The philosophy of argument* (pp. 223-40). Newport News, Virginia: Vale Press.
- Hart, H. L. A., & Honore, A. M. (1959). *Causation in the law*. Oxford: Clarendon Press.
- Hill, B., & Leeman, r. W. (1997). *The art and practice of argumentation and debate*. Mountain View, California: Mayfield Publishing Company.
- Ibert, C. P. (1910). *Evidence, The encyclopaedia britannica* (Vol. IX, pp. 11-21). New York: Encyclopaedia Britannica.
- Kauffeld, F. J. (1994). Veracity, accusation and conspiracy in Lincoln's campaign for the senate. *Rhetoric Society Quarterly*, 24, 5-28.
- Kauffeld, F. J. (1995). On the difference between assumptions and presumptions. In S. Jackson (Ed.), *Argumentation and values: Proceedings of the ninth SCA/AFA conference on argumentation* (Vol. Argumentation and Values, pp. 509-515). Alta, Utah: Speech Communication Association.
- Kauffeld, F. J. (1998a). The good case for practical propositions: Limits of the arguer's obligation to respond to objections. In F. H. v. Eemeren & R. Grootendorst & J. A. Blair & C. A. Willard (Eds.), *Fourth ISSA conference on argumentation* (pp. 439-444). University of Amsterdam: SICSAT.
- Kauffeld, F. J. (1998b). Presumption and the distribution of argumentative burdens in acts of proposing and accusing. *Argumentation*, 12(2), 245-266.
- Kauffeld, F. J. (1999). Arguments on the dialectical tier as structured by proposing and advising. In C. W. Tindale & H. V. Hansen & E. Sveda (Eds.), *Argumentation at the century's turn: Proceedings of the third OSSA conference*. St. Catharines: OSSA.
- Kauffeld, F. J. (2001a). Argumentation, discourse, and the rationality underlying Grice's analysis of utterance-meaning. In E. Nemeth T. (Ed.), *Cognition in language use: Selected papers from the 7th international pragmatics conference*

- (Vol. 1, pp. 149-163). Antwerp: International Pragmatics Association.
- Kauffeld, F. J. (2001b). Grice without the cooperative principle. *Paper presented at the fourth OSSA conference: Argumentation and its applications*. Windsor, Ontario.
- Kauffeld, F. J. (2002). Pivotal issues and norms in rhetorical theories of argumentation. In F. H. van Eemeren & P. Houtlosser (Eds.), *Rhetorical and dialectical perspectives on argumentative discourse: Redressing the balance*. Dordrecht: Kluwer Academic Publishers.
- Llewelyn, J. E. (1962). Presuppositions, assumptions and presumptions. *Theoria*, 28, 158-172.
- Marsh, P. O. (1964). Is debate merely a game for conservative players. *Speaker and Gavel*, 1, 2-17.
- Morton, J. C., & Hutchison, S. C. (1987). *The presumption of innocence*. Toronto: Carswell.
- Murphy, J. G., & Hampton, J. (1988). *Forgiveness and mercy*. Cambridge: Cambridge University Press.
- Perelman, C., & Olbrechts-Tyteca, L. (1969). *The new rhetoric: A treatise on argumentation* (J. Wilkinson & P. Weaver, Trans.). Notre Dame: University of Notre Dame Press.
- Rescher, N. (1977). *Dialectics: A controversy-oriented approach to the theory of knowledge*. Albany: State University of New York 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.
- Stampe, D. (1967). *On the acoustic behavior of rational animals* (Paper). University of Wisconsin, Madison, Wisconsin.
- Strawson, P. F. (1968). Freedom and resentment. In P. F. Strawson (Ed.), *Studies in the philosophy of thought and action* (pp. 71-96). New York: Oxford University Press.
- Ullmann-Margalit, E. (1983). On presumption. *Journal of Philosophy*, LXXX(3), 143-163.
- Walton, D. (1996). *Argumentation schemes for presumptive reasoning*. Mahwah, New Jersey: Lawrence Erlbaum Associates.
- Walton, D. N. (1993, 1993). The speech act of presumption. *Pragmatics and Cognition*, 1, 125-148.
- Whately, R. (1963). *Elements of rhetoric* (reprint edition ed.). Carbondale: Southern Illinois Press.

Willard, C. A. (1983). *Argumentation and the social grounds of knowledge*.  
University of Alabama: University of Alabama Press.