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Presumptions in argument: Epistemic versus social approaches

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ABSTRACT: This paper responds to Kauffeld's 2009 OSSA paper, considering the adequacy of his "commitment-based" approach to "ordinary presumptive practices" (which explains the communicative force of presumptions socially, through the moral motivation agents have to meet their obligations) to supply an account of presumption fit for general application in normative theories of argument. The central issue here is whether socially-grounded presumptions are defeasible in the right sorts of ways so as to produce "truth-tropic" presumptive inferences.

KEYWORDS: design theory; Kauffeld, Fred; presumption

1. INTRODUCTION

A presumption is a "taking before hand," and as Rescher (2006: 6) has so aptly put it, it is "more akin to a theft than a gift." To presume that p is to take it to be the case (i) in the absence of reasons against doing so (Cohen 1992: 4), but also (ii) in the absence of probative evidence that would ordinarily be required to judge, establish or determine that p (cf. Rescher 2006: 1). An important question naturally arises, then, as to when, if ever, we (as reasoners and arguers) are ever justified in, or entitled to, our presumptions. Further, if presuming is to be an interesting (or controversial) topic of investigation, and if presumptions have a unique role to play in argumentation, they must be different than adjacent maneuvers such as asserting, assuming (or supposing), hypothesizing, or presupposing.

In 2007, Douglas Walton and I published a paper on presumptions in argument. There, in a preliminary effort to develop a workable theory of presumptions in everyday argument, we proposed a notion of presumption specified according to its nature, foundation, function and force. Our work there included a survey of existing models of presumption including those of Whately, Sidgwick, Kauffeld, Rescher, Walton, Freeman and Ullmann-Margalit, and sought to draw together the workable insights from those models. Our proposed account was significantly informed by Ullman-Margalit's important work on presumptions from the 1980's and resembled Hansen's (2003) similar theory. It might now be remarked that our proposals share important resemblances with Rescher's more recent account of presumption, advanced in his (2006) *Presumption and the Practices of Tentative Cognition* (CUP), a work of which we were unacquainted (indeed unaware of) at the time.

1.1 Summary of Conclusions

In brief, Walton and I (2007) proposed that presumption is best understood as an inferentially-generated modality (or a modal operator) for a claim. The modal operator 'presum-

ably’ signals that, while the presumed claim has not been established, the burden of proof lies with anyone who would reject the claim. While in presuming a claim one is taking it for granted, to presume a claim is not to assert it. Whereas the burden of proof with an assertion lies with the assertor (or proponent), the burden of proof with a presumption is reversed and lies with the detractor (or respondent). Yet, since the presumed claim has not been established (the burden of assertion has not been met), presumptions are inherently defeasible, and a significant task of any theory of presumption is to specify the conditions under which presumptions ought to be defeated.

The nature of presumption, then, is functionally explained in terms of burden of proof. Since presumption is not argumentatively neutral – but rather locates argumentative responsibilities in ways that they would not otherwise be allocated – they cannot be generated arbitrarily or by fiat. Instead, presumptions are generated by special kinds of presumptive inferences, which serve to introduce presumed claims.¹

Roughly, a presumptive inference has the structure proposed by Ullmann-Margalit (1983)² and Hansen (2003).³ Taking ‘ Γp ’ as ‘Presumably, p ,’ we have:

Presumption Rule: $p \rightarrow \Gamma q$

Presumption-raising Claim (Antecedent / Base Claim): p

Presumed Claim (the Presumption): Γq

¹ Freeman (2005) rightly observes that presumptions can explain the acceptability of basic premises which are not supported inferentially. Rather, a basic premise (one unsupported by other reasons) is acceptable if there is a presumption in its favor, and such presumptions occur when the claim is backed (or, perhaps, generated) by a suitable source (Freeman 2005: ix-x, 32). Freeman classified sources of presumption into three categories: (i) external or inter-personal personal sources (e.g., common knowledge), (ii) personal belief generating mechanisms (e.g., the senses or memory), and (iii) plausibility-based presumptions (e.g., normalcy, uniformity and specificity).

Walton and I (2007: 329ff.) sought to recognize Freeman’s idea that some presumptions are source-based, rather than inferentially generated, while still accommodating source-based presumptions in an inferential model. In doing so, we claimed that “Even if the presumptive status of a claim does not *arise* inferentially, it is *explained*, and can be *analysed*, and, ultimately will have to be *evaluated* inferentially” (p. 336). As an example, we (p. 336) considered the case of a respondent who does not recognize his obligation to accept some presumption.

If the presumption is genuinely basic or primitive, then the dialogue simply becomes stuck. In order for the discussion to proceed, the nature and source of the respondent’s obligation will have to be explained to him; ultimately he will have not only to understand, but to accept, the conditions which give rise to his obligation. ... Thus [we concluded], even if some presumptions derive their presumptive status from a source rather than through a presumptive inference, it must be possible to make explicit the rational structure of the foundation of the presumption.

² According to Ullmann-Margalit (1983, p. 147 ff.), presumptions are articulated in presumption formulas of the form: ‘pres (P, Q),’ e.g., “There is a presumption that a child born in wedlock is legitimate.” Presumptive formulae of this sort can be read as: “P raises the presumption that Q,” or “there is a presumption from P that Q.” Presumptive inferences, then, have the following structure: Presumption Formula: Pres (P,Q); Presumption-raising Fact (Base Fact): P; Presumed Fact: Pres Q.

³ According to Hansen (2003: 3 ff.), presumptive inferences have the following structure: Major Premise [Presumption rule]: Everyone accused of a crime is to be presumed innocent (until proven guilty). Minor Premise [Antecedent fact]: Olsen has been accused of a crime. Conclusion [Presumptive proposition]: There is a presumption that Olsen is innocent.

Presumptions, then, are not only different from assertions, but, in being inferentially generated, they are also different from assumptions. Like presumptions, assumptions, are claims which are taken for granted. Yet, assumptions are not generated inferentially; rather they are among the bare beginnings of inference. Because of this, their probative status is entirely fleeting. The acceptability of an assumption is based entirely on the willingness of reasoners to accept it, and on its consistency with other accepted claims. Without any positive evidence in their support, bare assumptions should be abandoned at the first indication of their falsity, and they should be minimally load-bearing in reasoning, deliberation and the activities in which these are embedded. (For example, they might only be used initially to determine their consequences, as a way of testing the assumption for its acceptability.) Assumptions are introduced without any commitment to incur a burden of proof should they be challenged (by disputants or by the evidence), and as such must be given up (as assumptions) at the slightest challenge. Importantly, there is no reverse-burden of proof with assumptions; indeed there is no burden of proof whatsoever. When one undertakes to answer a challenged assumption with reasons, it becomes an assertion, and the burden lies, as it normally does, with the assertor.

Since presumptions are not argumentatively neutral, the foundations of presumptions must be carefully examined. In our framework, this can be done through a critical examination of presumption rules and their grounding. What kinds of considerations could ever ground or legitimate such rules? It is commonly noted that presuming in general is motivated by a practical need to move forward in acts of inference, deliberation, or argument and the broader activities in which these are embedded (Rescher 2006; Walton 2008). Similarly, there seems to be no one single kind of grounding on which existing presumption rules are based. Thus, Walton and I embraced a pluralistic account on which presumptive rules could be backed by evidential (probabilistic or plausibilistic) considerations (e.g., schematic arguments; Walton 1992, 1996), prudential considerations, considerations of basic values (e.g., of justice or morality), or social considerations (of the sort Kauffeld proposes). Given their practical motivations and deficient evidential underpinnings, entitlements to presumptions are limited in their scope. As Ullmann-Margalit (1983: 149) wrote “The [presumption] rule entitles one to hold [the presumed claim] as true for the purposes of concluding one’s practical deliberation on the impending issue; it neither requires nor entitles one to believe [the presumed claim].”

Given the variety of grounds from which presumptions might arise, Walton and I proposed that the force of a presumption (i.e., the ease with which it might be defeated) was a function of its grounding. The hope here was that the grounding and defeating conditions for the presumption might be explicitly stated, or perhaps even articulated within presumption rules as conditions of defeat—similar to Toulmin’s *unless* conditions.

Following Hansen (2003: 3), Walton and I (pp. 338-340) recognized a variety of ways in which a presumption can be defeated which we categorized as follows:

- (1) The antecedent claims (presumption raising conditions) can be rebutted.
- (2) Presumption rule itself can be challenged.
- (3) The fitness or application of the rule in some particular case can be challenged (e.g., by claiming that exempting conditions obtain).
- (4) The presumptive claim can be directly rebutted.

Cases of types 1-3 all seek to undermine a presumptive inference in ways similar to those in which ordinary defeasible inference can be rebutted. Importantly, in the first two cases, the lines of defeat presented are open prior to the establishment of the presumption, and thus do not come with a reverse burden of proof. Similarly, if the application of the presumption rule is undermined, its consequent (the presumption) fails to be established and no reverse burden of proof is placed. (Presumption rules are like other defeasible inference rules in these respects.) Thus, the only condition of defeat which is unique to presumption is the case of direct rebuttal of the presumed claim.

Because presumed claims have not met the burden of assertion, the standard of direct presumption rebuttal ought to be far less than that of meeting a burden of assertion for the contrary or contradictory of the presumed claim. The standard of direct presumption rebuttal Walton and I proposed was that of a bursting-bubble: when evidence negatively relevant to the presumed claim is admitted, then the presumed status of the claim is burst. In the absence of a presumption in its favor, a claim returns to the arena of dispute with the burden of proof residing normally, with any disputant wishing to assert it.

In any of the four cases, the result of a successful challenge is the defeat of the presumptive status of the claim, not the claim being presumed. Importantly, the defeat of a presumption may not render it entirely implausible. As Walton and I noted (p. 340), upon direct rebuttal of a presumed claim, while “the *presumptive* weight of the antecedent conditions in the presumptive rule is lost ... their *probative* weight (if any) remains.”

Clearly, the account we presented is incomplete and wanting in many respects, though we (p. 341) offered it only as “a framework in which theories of presumption might fruitfully be conceived and developed.” The topics we suggested as deserving of further of study clustered around the normative dimensions and foundations of presumption, including the relationship between ordinary and legal presumptions, and the relationship between presumption, plausibility and defeasibility.

2. KAUFFELD’S COMMITMENT-BASED MODEL

Among the accounts Walton and I (2007) considered was Kauffeld’s (1995; 1998; 2003). We called our rendering of Kauffeld’s account “expectation-based” because, it seemed to us, the force of Kauffeld’s presumptions is manifested in a kind of entitlement – an entitlement of one interlocutor to expect that some agent (perhaps another interlocutor) will perform an action and thereby make some state of affairs the case. Corresponding to this entitlement is an obligation, duty or commitment, on the part of that agent to undertake some action, thereby making the relevant state of affairs so. These entitlements and obligations form the social basis of presumptions. If I was entitled to expect an agent to perform some action, I was thereby entitled to presume (upon him) that he would do so, and thereby also that it would be done.

In responding to us, Kauffeld (2009: 3) expressed his preference for the name “commitment-based” account, because “While our ordinary practices of presuming things does involve expectations, our day-to-day understanding of presumption is *based* on commitments, rights, entitlements, etc. which warrant those expectations.”

In this context, Kauffeld (2009: 3) proposes the following picture of presuming:

To presume that *p*, in the ordinary sense of the term is to infer that *p* on the supposition some agent has made, is making, or will make it the case that *p*, rather than risk criticism, retribu-

tion, etc. for failing to do so. Such inferences are founded on the commitments persons undertake, often openly and explicitly, and on the (corresponding) entitlements due others. The practical calculation animating presumptive inference supposes that *A* will be vulnerable to criticism should she fail to do *x*. Accordingly, I have argued, presumptions have the following structure [Kauffeld then quotes himself as saying]: 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 resentment 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. (Kauffeld 2003, emphasis newly supplied)⁴

Kauffeld (2003: 142; cf. 1995: 511) sees this as fitting with our ordinary practices of presuming whereby “we regard *resumptions* as suppositions ‘we are entitled to’ because it is incumbent upon someone else to make them true.”

Initially, then, the force of a presumption derives from its hold over people (or a person). That is ordinary presumptions mark obligations of individuals—obligations grounded in, and arising from, the social dimensions of talk and action. Specifically, Kauffeld (2009: 3) locates a source of these presumption-raising obligations in what T.M. Scanlon called “moral motivation.”

On the supposition that a morally motivated agent would not act in a way that would provide others with reasonable (and perhaps unanswerable) basis for objection, criticism, resentment, reprobation, etc., those others may reasonably infer that in this particular case the agent is acting responsibly, truthfully, dutifully, and so on.

The inferential and predictive role of presumptions is derivative from this social dimension. That someone is *obliged* to make something the case *entitles* us to presume that they will do so, and this, in turn, *justifies* us in inferring that, presumably, it will be the case.

While there is more which deserves to be said about Kauffeld’s picture of presuming (see §4 below, esp. §§4.3 – 4.4), let me interrupt myself at this juncture to consider Walton’s and my (2007) objection to Kauffeld’s account.

3. GODDEN & WALTON’S COUNTER-EXAMPLE TO KAUFFELD’S MODEL

Walton and I (2007) raised two sorts of objections to Kauffeld’s model. The first was that Kauffeld’s model seemed to decouple the ideas of presumption and burden of proof.⁵ The second was that Kauffeld’s presumptions seemed to not be defeasible in the right sorts of ways.⁶ It is this second criticism which is the locus of the present discussion.

⁴ Cf. Kauffeld (2003: 140): “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, loss of esteem or even punishment for failing to do so” (and cf. Kauffeld 1995, p. 510).

⁵ This was a minor point which we did not pursue, and was based on the observation that presumptions are, on Kauffeld’s model, explained in terms of commitments and entitlements, rather than in terms of burden of proof. We agreed with Kauffeld that presumptions were not the *only* argumentative devices involved in the allocation of the burden of proof (p. 321), but held that presumptions always functioned to reverse a local burden of proof concerning the presumed claim.

⁶ At times, we (p. 323) wrote that on Kauffeld’s model “presumptions do not seem to retain the property of defeasibility.” As Kauffeld (2009) rightly argues, this is to put the point too strongly. There are many circumstances in which the social obligations that ground and give rise to Kauffeldian presumptions can

Since Kauffeldian presumptions are grounded in social commitments and entitlements, and these are in turn used as a basis for making predictive inferences, it seemed to Walton and to me that there were cases where the predictive force of the presumption would be defeated (e.g., when there was negatively relevant empirical evidence against the presumed claim), even though the obligation underwriting the presumptive inference was itself unaffected by this empirical evidence. To illustrate we offered the following case:

Consider the case where it is a soldier's duty to raise the flag at dawn, but he is very unreliable and tends to sleep in. Consider now our presumption (as Kauffeld would have us talk of it) that *p*: the soldier will raise the flag at dawn. In one sense, the presumption that *p* does not disappear in the face of evidence that the social bonds obliging the soldier to bring it about that *p* will not be met. We are still entitled to presume (in the normative [i.e., social] sense) that *p*, even though it is not likely to happen. In such a circumstance, it is quite sensible to say that while I still presume that *p*, I do not take it to be so. (In a similar way, I could say that I still expect something of the soldier, even though I do not have any expectation about the state of the flag at dawn.) So, while we might be *entitled* to presume, we would no longer be *justified* in doing so. (Godden & Walton 2007: 323)

To us, the crux of the matter seemed to be that while Kauffeldian presumptions have their grounds in a network of social obligations (commitments and entitlements), they are inferentially used for predictive ends. The inferential force of presumptions derives entirely from these social obligations; yet these obligations do not disappear in the face of empirical evidence that they are not likely to be met. That a person is *not likely* to do something does not change the fact that he *ought* to do it (or that he is committed to doing it). Nor does it change our *entitlement* to *expect him* to do it and hold him accountable for not doing it. Yet, that he is *not likely* to do it *does* affect our *justification* in inferring that he *will* do it, and our (predictive) *expectation* that it will be done.

4. KAUFFELD'S RESPONSE

At the previous OSSA, Kauffeld provided a robust and considered reply to our criticism. As I understand it, Kauffeld's (2009) response involves several key claims: First, that his account "is neither a model nor a contribution to a theory of presumption; [but rather] it is simply a pre-theoretical account of ordinary concepts and practices" (pp. 1-2). Second, that Kauffeldian presumptions are "thoroughly defeasible" (p. 12), and third that "plain presumptions enable arguers to manage defeasible propositions" (p. 12).

4.1 Theoretical Context of Kauffeld's Approach

To begin, Kauffeld (2009: 1-2) presents his account as occurring within the same spirit or tradition as "ordinary language philosophy," offering a "pre-theoretical account of ordinary concepts and practices" in an attempt to "identify what we ordinarily are doing when we

be fail, or cease, to have effect (see §4.2 below). As will become clear from the discussion below, and as we hoped was apparent from the context of our original remark, our point was that since Kauffeld's account of presumptions finds its normative basis in a social structure of commitments and entitlements, and uses this as a basis on which to make predictive claims of fact, there are conditions which seem to render the predictive claim unjustified which do not affect the social obligation. Thus, presumed claims are not defeated on Kauffeld's account when, to our thinking, they *ought* to be.

presume things, and to explicate how presumptions figure in day-to-day argumentation.” Walton and I, he claims, “present no reason to suppose that Kauffeld has misrepresented the ways in which we [sometimes] ordinarily go about presuming.” Thus, Kauffeld “propose[s] to regard Godden and Walton’s criticisms of ‘Kauffeld’s model’ as challenges to the capacity of ordinary presuming and presumption to support day-to-day argumentation.”

4.2 Defeasibility

On the point of defeasibility, Kauffeld (2009: 5-6) demonstrates that presumptions, on his account, are defeasible and considers three kinds of cases which might defeat an inference that: Presumably, Smith will raise the flag, on the grounds that his commanding officer told me that she is going to assign Smith that duty. These are:

- (A) Situations where “we would not regard the proposition presumed as a reliable prediction” (p. 6)—e.g., if the soldier were lazy or belligerent.
- (B) Situations which “challenge the supposition that the commander’s orders creates an obligation binding on Smith which requires that he raise the flag ... [because] the situations is not one in which he [Smith] would have efficacious moral motivation” (p. 6)—e.g., if the flag was stolen or the Smith had a medical condition preventing him from following his orders.
- (C) Situations which “challenge the grounds on which the presumption rests” (p. 6)—e.g., if the orders were not posted, or the commander lied about posting them.

In each case, Kauffeld (p. 8) encourages us to look and see what we would ordinarily do in situations of this type. These reactions often involve an “attempt to correct the circumstances which challenge the presumptive status of the conclusion,” and range from informing Smith of his duty (C), to notifying the commander that the flags have been stolen (B), to assigning a more responsible soldier the task of overseeing Smith’s execution of his duty (A).

4.3 Grounded Norms

At this point, it is worthwhile to step back and recognize some very important features afforded to the theorist by Kauffeld’s approach to presumption. Because the normative foundations of presumption are ultimately grounded in our ‘moral motivations,’ and the attendant social commitments and obligations that we take upon ourselves or place upon each other in ordinary circumstances, that they are binding upon subjects needs no special explanation or justification. Indeed, that they are binding is, in the normal case, not only abundantly apparent to a third-party observer (read “theorist”), but to the discussants (read “arguers”) themselves. Further it is easily explained how and why these commitments are binding upon their bearers, and what entitlements they afford others. Thus, Kauffeld’s approach to presumption places the norms regulating acts of presuming easily and clearly within the reach of presumpers and presumees.

Further, as Kauffeld (2009: 8) himself notes, by grounding presumptions in the ‘moral motivations’ of agents, the force of presumptions can be manipulated in relatively ordinary and straightforward ways. For example, by requiring a deposit on a borrowed

item, we can increase the strength of the presumption that the borrower will return the item, since the cost to him of failing to return it has been increased – and in a way that is abundantly apparent to him. That is, the strength of socially-grounded presumptions can be manipulated by altering the consequences of the (non-)performance of an obligation through a structure of incentives and deterrents, rewards and punishments, in a way that is apparent to the agent. Thus Kauffeld writes that “presumptive inference is weakened or strengthened by variation in the circumstances entering an agent’s calculation of the risk of resentment he would run were he to fail to act in accord with the commitments warranting the presumption” (ibid.: 9).

4.4 Design Theory

To appreciate the significance of these advantages, consider that one problem with normative theories of argument is that they have typically failed to concern themselves adequately with the descriptive relevance (Godden 2005: §7.2) of the argumentative norms they prescribe. All too often, theorists have sought to superimpose, *a priori* a normative standard on to a situated instance of argumentation without first determining whether this is a standard at which the arguers are, or ought to be, aiming.

For example, Jean Goodwin (2007) has recently argued that functional approaches to argument have sought to supply such argumentative norms by supposing that different activity-types (read “types of discourse”) are teleologically oriented towards some goal (or social good) which is given independently of the goals of their participants. The functional theorist then cites these goals as justification for superimposing them, and any attendant norms, upon putative putative participants of that activity-type. All this is done without any explanation of how, or attention to whether, participants do in fact hold themselves and each other accountable to these teleological, or functional, norms. Approaches such as this Goodwin (2007: 74) criticizes as “theory without tears.”

In place of *a prioristic*, functional approaches of this sort, Goodwin (2002: 6) advocates that argumentative norms, understood as a kind of normative pragmatics, are best discovered and explained through a *design* approach. Whereas pragmatic approaches have typically adopted the paradigm of the dialogue, “[d]esign theory, by contrast, proposes the *transaction* as the paradigm for the activity of arguing,” where “transaction” is understood (as per *Webster’s*) as “a communication or activity involving two parties or two things reciprocally affecting or influencing each other.”

To help conceptualize the differences between these perspectives, Goodwin (2002: 10) proposes the following analogy: according to dialogue theory arguing is like *waltzing* – a cooperative and highly orchestrated and ritualized inter-individual routine adhering to strict rules—while design theories conceive of arguing as like *walking* through a crowd—a de-centralized but self-regulating pattern of behaviors in which autonomous, self-directed agents act strategically to realize their own goals while having to take account of, react to, and influence the behavior of others in order to succeed.

Importantly, the design approach offers the theorist an entirely new, grassroots, or ground-up account of the nature, origins and force of the norms governing self-regulating activities of this type—activities which, Goodwin claims, include argumentation.

Instead of deriving norms from the standards set by some social function external to arguing, design theories contend that the argumentative transaction is internally self-regulating. Each arguer, to achieve her goals, tries to establish for herself and the other participants a normative environment within which their arguing can proceed. (Goodwin 2002: 8)

4.5 Plain and Special Presumption in Argumentation

It is in this context that Kauffeld (2009: 12f.) advertises his account as “introduc[ing] a set of considerations which need to be taken into account as we move toward a ‘robust theory’ of presumptions in everyday argumentation.” In as much as Kauffeld (2009: 1) presents his account of presumption as “simply a pre-theoretical articulation of ordinary concepts and practices,” he clearly holds that it has important implications for, and offers important normative and theoretical resources to, argumentation theory. In his conclusion he (2009: 12) claims to have “provide[d] some first steps towards an account of how plain presumptions enable arguers to manage defeasible propositions,” in that that “by openly undertaking probative obligations arguers can generate a structure of special presumptions within which they can defend and challenge epistemically important defeasible claims.” In a similar vein, Goodwin (2002: 11) finds that “Kauffeld’s underlying ideas about assumptions and presumptions could be turned into a theory of how arguers go about generating adequate premises for their arguing.”

5. REPLY: SOCIAL GROUNDS & PROBATIVE MERITS

Let me say that I have a sincere sympathy for the design approach. Its approach to the foundation, establishment and application of argumentative norms addresses a set of unresolved problems which I think are crucial yet underappreciated. How can we explain the binding force of argumentative norms over actual arguers in situated acts of arguing? How do we go about enforcing those norms, and holding arguers accountable to them? How can theorists justify applying one set of norms rather than another when evaluating situated acts of arguing? It seems to me that the design approach points us in a direction well worth exploring in an effort to locate viable solutions to problems such as these.

Having sought to recognize the important advantages, and normative and theoretical resources offered to argumentation theory by Kauffeld’s account of presumption, I will now seek to point out that, for all its virtues and promise, Kauffeld has not adequately answered Walton’s and my original criticism. There is one important question about argumentative norms which Kauffeld’s reply does not seem to address. How is the status of argumentative norms *as norms* to be justified? What is it about the source or foundation of our argumentative norms that shows that they are the norms that we *ought* to use? That we do, *in fact*, use these norms to govern our argumentative behavior does not show that we *ought* to. For Kauffeld, it would seem, the source of the ought is social. Yet, social oughts do not seem to be of the right kind to ground inferential (and argumentative) oughts, and thereby to warrant inferential (and argumentative) moves.

Recall that Walton and I were concerned to develop a theory of presumptive inference. We asked ourselves when ought presumptive inference to be justified, and when ought it to be defeated? Under what circumstances is a reversal of the burden of proof justified, and when ought that burden to revert back to normal? When we considered Kauffeld’s account, we asked whether Kauffeld’s ordinary presumptions can answer the-

se questions, and thereby underwrite the norms governing our practices of presumptive inference. While we allowed that social considerations can sometimes warrant presumptive inferences, we argued that Kauffeld's account could not be accepted as it stands because it doesn't seem to allow presumptive inference to be defeated in the right sorts of ways – specifically in the case of direct rebuttal of the presumed claim.

Kauffeld replied that ordinary presumptions are, on his account, thoroughly defeasible. And, he supplied three types of cases as examples of how they are so. Each of these case-types fall under one of the categories of defeat Walton and I proposed. Kauffeld's type-B cases, which challenge the supposition that the satisfaction of the antecedent conditions create an obligation (or presumption), are examples of our third category of defeat in which the fitness or application of the presumption rule in some particular case is challenged (e.g., by claiming that exempting conditions obtain). Kauffeld's type-C cases, which challenge the ground on which the presumption is based, fall under our second category of defeat, where the presumption rule itself is challenged. Kauffeld (as I understand him) treats cases of both these types as though the presumption—and the obligations underwriting the presumption—fail to be established. That is, the presumption never takes effect. As such, cases of these types do not offer examples of how presumptions can be defeated or directly rebutted. Of these two case-types, I have no objection to Kauffeld's treatment, and nor did they form the locus of our initial critique.

It is only cases of type-A, where “we would not regard the proposition presumed as a reliable prediction” (Kauffeld 2009: 6), where there seems to be an issue. (Walton's and my lazy soldier example was offered as a case of this type.) Importantly, cases of this type fall under our fourth category of presumption defeat—direct rebuttal of the presumed claim. Here though, it is not at all clear *to me* whether Kauffeld concedes that the presumption is defeated (as we claimed it ought to be), or whether he maintains that it stands. (He certainly offers no reasons for thinking that the presumptive inference ought not to be defeated in cases of this sort.) And, if he concedes that the presumption is defeated (through rebuttal) it is not at all clear what *his* reasons would be for saying so.

What is interesting is that when Kauffeld considers situations of presumption defeat (including those of type-A), his inclination is to consider the strategy which an agent might employ to reinforce or re-establish the presumption. What he does not address is how circumstances of this type should affect the inferences we are entitled to draw on the basis of the presumption. Yet, this was precisely Walton's and my initial concern. Specifically, then, what is important here is not what one might do to repair the basis of the presumption, but what inferences one is justified in drawing.

To appreciate this difference in focus, consider a type of case where there is a blanket presumption – i.e., where the social conditions creating the presumption (those supplying, articulating, or amplifying the moral motivation of agents) is universal – but there are specific empirical circumstances which indicate that the obligation will likely not be met by some particular agents. Since the social grounds underwriting the presumption remain the same across all cases, it would seem as though, on Kauffeld's picture, the presumption stands equally in each case. Yet, there are some particular cases in which there is evidence indicating that the presumed claim is unlikely. In these cases, I argue, the conclusion of the presumptive inference ought not to stand, and the presumptive inference is rebutted.

For example, consider the prohibition against drunk driving. Now, we all have a moral motivation to drive sober, whether our incentive be selfish (not wanting to be

caught driving drunk and suffer the penalty) or other-regarding (not wanting to cause harm). On this basis, we may presume that drivers are sober, and thereby predict that, presumably, any particular driver is sober.

Consider now that the person leaving the bar after the ball game, with the smell of alcohol on his breath, stumbling and slurring his speech, is under the same moral obligation and has the same moral commitment to drive sober as the rest of us. But when we see him get into his car and start the engine, the presumption that he is driving sober is directly rebutted by these empirical observations. As such, any presumptive inference drawn from these social grounds and used to predict his sobriety behind the wheel ceases to be justified.

Following Kauffeld's direction, we may now adjust or amplify the social stakes as high as we like (for example by adding highly publicized preventative measures such as billboards, enforcement campaigns, publishing the names of offenders in the local paper, and threatening to penalize offenders by revoking their driving privileges). This will surely affect the deliberative calculations of many drivers who might not otherwise abide by their obligations. But as advantageous as this is, it is not to the point. It is not merely that some people will remain uncoerced by these measures—that they will fail to be morally motivated by them—but that empirical data of the sort just described rebuts the presumptive force of these social factors, no matter how high they are set or amplified.

What is affected by this information? The drunk driver remains bound by his commitment to drive sober. As such, we remain entitled to (i) expect of him that he will behave as he ought to, and (ii) to punish him in the event that he fails to do so. As such, we remain entitled to presume *of him* that he drive sober; indeed this is part of what licenses us to punish him for not doing so. The social basis and force of the presumption remains entirely unaffected by information negatively relevant to the *fact* of his sobriety. Yet, these are precisely the elements to which Kauffeld directs our theoretical attention. So, it would seem that the ordinary, social aspects of presumption (which hold over people) are not defeated at all in A-type circumstances. (This is importantly unlike circumstances of types B and C, where the social dimensions of the presumption *are* adversely affected by the defeating conditions. In each of these conditions, Kauffeld claims that the obligation underwriting the presumption fails to be established or take effect.)

What is affected, though, is the probative or predictive import of these presumptive grounds. What is affected are the inferences we are entitled to draw on the basis of these social considerations. Specifically, upon discovery of the negatively relevant information, we are no longer entitled to make the inference, on this basis, and draw the conclusion that, presumably, he is sober. And this because we are no longer justified in presuming *that* he is sober (though we remain entitled to presume sobriety *of him*). Yet, in as much as Kauffeld discusses the kinds of things we might do in cases of presumption defeat (e.g., to repair the presumptive grounds), he never considers how we ought to adjust our *inferential* practices – which inferences remain justified and which are defeated. Yet, if the ordinary practices of presumption described by Kauffeld are to make a contribution to argumentation theory, or form the basis of an argumentative practice, they ought to be instructive about when our presumptive inferences are justified and when they are not.

So, if, on Kauffeld's account, the presumptive inference remains undefeated (as does the social presumption), then I suggest that Kauffeld's account has a serious problem: it counts as justified a class of inferences which are *prima facie* unjustified. If, on the other hand, it is conceded that the presumptive inference is defeated while the social

conditions warranting the presumptive inference are unaffected by the empirical conditions rebutting its conclusion, then we require some explanation of *why* the presumptive inference should be defeated. To provide this, I suggest, is to admit that presumptive inferences are warranted only in cases where their antecedent conditions have something more than mere social force. They must have (perhaps in addition to social force) at least some probative weight, or positive relevance to their conclusions.

Indeed, without probative weight, the social force alone fails to warrant presumptive inferences. That I *ought* to do something is only a good reason for thinking that I *will* do it if it is known that I generally do as I ought to (or, perhaps, that I *will* do so if the stakes are sufficiently high). Without this (or these) last claim(s) the normative ground of social obligation fails entirely to have any predictive or probative import. Further, it is because the antecedent conditions are taken to offer *some* probative weight to the conclusion that the presumptive status with which they endow their conclusions is rebutted by evidence negatively relevant to the conclusion. That is, if social grounds are not themselves probative then they do not adequately warrant presumptive inferences. If social conditions are not positively relevant to the truth of the conclusion then they do not warrant even the presumptive acceptance of the conclusion.

Finally, return to our example and consider the kinds of measures we take when we are convinced that a person is unlikely to (regularly) live up to his commitments—where moral motivations cease to be effective. We might remove his driving privileges entirely. We do this not to alter his moral calculations, but to make the fact of his driving drunk less likely. Indeed we would explain our doing so by citing our rejection of the predictive conclusion that presumably, he's sober when he drives. Alternately, we might require the installation of a breath analyzer, hooked up to the ignition of the person's car, so that he cannot start his car unless he provides a breath sample which registers him as sober. Again, *doing* this does not affect the moral calculation of the agent (though *threatening* to do so might). Now, what we would like to know in order to presume that he is going to drive sober (namely, that he will do as he ought to) is that he is, in fact, sober.

6. CONCLUSION

To sum up, the crux of the matter seems to be that in order for Kauffeld's ordinary presumptions, grounded in a network of social obligations (commitments and entitlements), to contribute to a theory of argument (and so allow us to manage defeasible propositions), they must be able to underwrite presumptive inferences which are used for predictive ends and have the force of shifting the burden of proof to their objectors. Yet, since the force of ordinary presumptions derives entirely from social obligations which do not disappear in the face of empirical evidence that they are not likely to be met, presumptive inferences grounded solely in social obligations will not be defeated in cases where they ought to be, namely when information negatively relevant to the conclusion is discovered. In such cases, the ordinary presumption grounding the inference is not defeated. That a person is *not likely* to do something does not change the fact that he *ought* to do it. Nor does it change our *entitlement* to *expect him* to do it and hold him accountable for not doing it. Yet, in these cases the inferential import of these ordinary presumptions is defeated. That the person is *not likely* to do as he ought *does* affect our *justification* in inferring that he *will* do it, and our (predictive) *expectation* that it will be done. Ordinary pre-

sumptions, then, are not defeated in cases where presumptive inferences ought to be. Because of this, I suggest that ordinary presumptions, on their own, cannot supply or underwrite a theory of presumptive inference. Rather, a theory of presumptive inference must be based on the probative or epistemic merit of presumption-generating conditions, as well, perhaps, as their social force in generating obligations for agents.

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Commentary on “PRESUMPTIONS IN ARGUMENT: EPISTEMIC VERSUS SOCIAL APPROACHES”

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1. INTRODUCTION

David Godden’s paper (Godden 2011; all page references in the text are to this paper) continues a debate that he and Douglas Walton are having with Fred Kauffeld concerning the proper analysis of *presumptions* in argument. Godden and Walton (henceforth ‘GW’) defend an ‘epistemic’ account of presumption, while Kauffeld defends a ‘social’ account. On the GW account, presumptions are taken for granted by arguers but not asserted by them; arguers are *entitled* to presume them, though not *justified* by reasons or evidence to assert, believe, or use them in argument. (Godden (and Kauffeld?) sometimes (pp. 1; 5) write(s) as if entitlement and justification are the same, or that the first entails the second. They are not; it doesn’t.) Strikingly, on the GW view the burden falls on interlocutors to defeat presumptions. The burden of proof is not on the presumer to defend her presumption, but on her interlocutor, the respondent or detractor, to challenge it. (p. 4) In this sense presumptions can be said, on the GW account, to be innocent until proven guilty; arguers are entitled to their presumptions unless and until their interlocutors challenge and defeat them. This burden of proof alignment distinguishes presumptions from assumptions, assertions, presuppositions, and other, otherwise similar, argument constituents; for these, the burden falls on the arguer, not her interlocutor. According to GW, defeating a presumption is a matter of defeating its presumptive status, rather than defeating the claim presumed.

There are several potential grounds or legitimators of presumption rules, and, correspondingly, several avenues to defeat. GW emphasize one of them—“direct rebuttal of the presumed claim” (p. 4)—and argue that Kauffeld’s social account cannot accommodate it.

2. THE SOCIAL ACCOUNT AND THE GW CRITICISM OF IT

On Kauffeld’s ‘social’ account, presumptions are grounded in what might be called ‘social expectations’ or ‘commitments.’ As Godden summarizes it, “That someone is *obliged* to make something the case *entitles* us to presume that they will do so, and this, in turn, *justifies* us in inferring that, presumably, it will be the case.” (p. 5, emphases Godden’s) For example, as Kauffeld puts it,

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 resentment 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. (cited at p. 5, emphasis Godden's)

The idea is that people make commitments, which entitles others to make presumptions.

The central GW objection to this social account of presumption is that it fails to take full account of the inferential use to which presumptions are put, and the ability of evidence to interfere with such inferences. GW offer the example of the sleepy soldier: his duty is to raise the flag at dawn, but he tends to oversleep. According to the social account, we are entitled to presume that he will raise the flag at dawn, even though the evidence we have of his tendency to oversleep undermines our expectation that he will do so. According to GW, the social account is defective because of its failure to accommodate the way in which evidence can defeat such presumptive inferences: "While we allowed that social considerations can sometimes warrant presumptive inferences, we argued that Kauffeld's account could not be accepted as it stands because it doesn't seem to allow presumptive inference to be defeated in the right sort of ways – specifically in the case of direct rebuttal of the presumed claim." (p. 10) The evidence of the soldier's tendency to oversleep rebuts not only our expectation that the flag will be raised on time, but the presumptive status of the presumption: according to GW, given the evidence, the arguer is no longer entitled to derivatively presume, or to infer from the socially-grounded presumption, that the soldier will fulfill his commitment and raise the flag at dawn.

Godden discusses Kauffeld's response to GW's objection at some length (pp. 7-13); I will not pursue this back-and-forth in detail here, since they would do it more effectively themselves. Instead, I will briefly address some general issues and questions raised by Godden's discussion.

3. THE DRUNK DRIVER EXAMPLE

Godden writes:

[C]onsider the prohibition against drunk driving... [w]e all have a moral motivation to drive sober, whether our incentive be selfish...or other-regarding... On this basis, we may presume that drivers are sober, and thereby predict that, presumably, any particular driver is sober. (p. 11)

If we then see Jones leave the bar after the game with the smell of alcohol on his breath, walking unsteadily and slurring his speech, and start his car,

the presumption that he is driving sober is directly rebutted by these empirical observations. As such, any presumptive inference drawn from these social grounds and used to predict his sobriety behind the wheel ceases to be justified. (p. 11)

This seems right to me. But Godden continues:

The drunk driver remains bound by his commitment to drive sober. As such, we remain entitled to (i) expect of him that he will behave as he ought to, and (ii) to punish him in the event that he fails to do so. As such, we remain entitled to presume *of him* that he drive sober; indeed this is part of what licenses us to punish him for not doing so. The social basis and force

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of the presumption remain entirely unaffected by information negatively relevant to the *fact* of his sobriety. (p. 12, emphases Godden's)

This seems to me not right. First, he has not so committed himself. Second, given the evidence we are not any longer so entitled. The social basis and force of the presumption seem to me not only *not* to remain "entirely unaffected," but to be undermined by the negatively relevant information. Godden writes: "...we are no longer justified in presuming *that* he is sober (though we remain entitled to presume sobriety *of him*)." (p. 12, emphases Godden's) But once we cannot justifiably presume that he is sober, how can we remain entitled to presume sobriety of him? This claim needs to be supplemented by a more careful discussion of justification, entitlement, and their relationship.

4. BURDEN OF PROOF

Why should the burden of proof fall on the interlocutor to challenge and defeat the presumptive status of a presumption? This is not explained. It should be. In particular: why isn't the burden born equally by the disputants?

5. 'EPISTEMIC' VERSUS 'SOCIAL' ACCOUNTS

Godden writes:

Without probative weight, the social force alone fails to warrant presumptive inferences. That I *ought* to do something is only a good reason for thinking that I *will* do it if it is known that I generally do as I ought to (or, perhaps, that I *will* do so if the stakes are sufficiently high). [Otherwise] the normative ground of social obligation fails entirely to have any predictive or probative import. (p. 12, emphases Godden's)

Here GW seems to me to be entirely right, but only with a qualification. GW are right that "the normative ground of social obligation" fails to have predictive or probative import. This is why it makes sense to regard their account as 'epistemic.' But they do not successfully explain why that ground grounds the original alleged entitlement, given the negatively relevant evidence that undermines the inference. In this respect their account remains problematically 'social.'

Godden writes:

[S]ince the force of ordinary presumptions derives entirely [on Kauffeld's account] from social obligations *which do not disappear in the face of empirical evidence that they are not likely to be met*, presumptive inferences grounded solely in social obligations will not be defeated in cases where they ought to be, namely when information negatively relevant to the conclusion is discovered. (p. 13, emphasis added)

Suppose this is correct. Still, consider the italicized phrase. Godden is right that the social obligations do not disappear. But why does the *entitlement to the presumption* not disappear? Jones is obliged to refrain from drunk driving, even when we have good evidence that he fails to meet that obligation. But when we have such evidence, how can we still be entitled to presume of him that he will refrain from driving while drunk? It is not just the inference, but the entitlement itself, that the negative evidence puts in jeopardy. So when Godden continues:

That a person is *not likely* to do something does not change the fact that he *ought* to do it. Nor does it change our *entitlement* to *expect him* to do it and hold him accountable for not doing it. (p. 13, emphasis Godden's)

I think he has a problem. The first sentence is of course correct. But once we know that Jones is unlikely to do something, how can we be *entitled* nevertheless to expect him to do it anyway, given the negative evince? It seems to me that the negative evidence upends the entitlement every bit as much as it upends the inference.

6. CONCLUSION

I have considerable sympathy for the GW account of presumption. My reservations no doubt reflect my ignorance of the subtleties of the issues and the literature, and I look forward to Godden's, Walton's and Kauffeld's further discussion.

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