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# Presuming and Presumption in Everyday Argumentation: A response to Godden and Walton

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**ABSTRACT:** In response to critique by Godden and Walton, this essay delineates the role of moral motivation in the commitment structure of ordinary presumptive inferences. It defends the capacity of ordinary presumptions to support discursive structures within which everyday argumentation can address defeasible claims and enable alignments and realignments in probative obligations, i.e., burdens of proof.

**KEYWORDS:** Anscombe, argumentation, burden of proof, defeasible, Godden, Letter for Birmingham Jail, Martin Luther King, obligation, presumption, probative moral motivation, Walton

## 1. INTRODUCTION

In a recent essay David Godden and Douglas Walton offer a framework for developing “A theory of presumption for everyday argumentation” (2007). In the course of their literature review they offer an assessment of the limits of “Kauffeld’s model of presumption.” In this paper I respond to their critique.

My task is complicated by differences in our respective research orientations. Godden and Walton aspire to develop an explanation of presumption suited to a theory of argumentation (2007, p. 314). Accordingly, they ascribe theoretical pretensions to “Kauffeld’s model;” whereas, the research to which they refer is a more modest attempt to identify what we ordinarily are doing when we presume things and to explicate how presumptions figure in day-to-day argumentation. This attempt at analysis and explication is ultimately animated by theoretical interests, but it is methodologically situated in traditions of “ordinary language philosophy,” and it leans heavily on the pioneering work of J. L. Austin, G. J. Warnock, the non-theoretical aspects of H. P. Grice’s analysis of utterance-meaning, Dennis Stampe’s studies of speech acts and so on (Austin 1962; Grice 1969; Stampe 1967; Warnock 1973). Work in this philosophical tradition focuses initially on the analysis of ordinary concepts and practices. In this respect Kauffeld’s study of presumption has an emic as contrasted with an entic orientation and is closely akin to work done by ethnomethodologists (Black 1980). When Godden and Walton evaluate “Kauffeld’s model of presumption,” the object of their criticism is neither a model nor a

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contribution to a theory of presumption; it is simply a pre-theoretical articulation of ordinary concepts and practices.

What, then, is the force of Godden and Walton's critique? Are they challenging the adequacy of Kauffeld's explication of our concept and practice of presuming things, or are they assessing the limits of those concepts and practices as bases for conducting day-to-day argumentation. They acknowledge that Kauffeld *sees* "his model" as describing [...] the ordinary use of presumption, but they present no reason to suppose that Kauffeld has misrepresented the ways in which we ordinarily conceive presumptions and go about presuming.<sup>1</sup> Supposing that their criticisms are well founded (a supposition challenged by the argument which follows) are we to conclude that my analysis is flawed or that our ordinary practices are limited or incoherent in some argumentatively significant respect? Since Godden and Walton provide no reason to suppose that I have misrepresented our ordinary practices, I propose 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-argumentation,<sup>2</sup> and I will present my response as a defence of those plain practices.

This approach bridges our respective research orientations. Godden and Walton's critique has a solid "theoretical" base; it rightly supposes that any good account the role of presumption in day-to-day argumentation will have to deal with two aspects of persuasive arguments: (i) their defeasible nature and (ii) the ways in which presumptions figure both in the genesis and shifting of "burdens of proof." Their criticism raises the question of whether our ordinary conception of presumption can support these aspects of persuasive argumentation. For reasons detailed elsewhere I hold that we should replace talk about "burden of proof" and "shifts" in such burdens with a terminology which represents this normative aspect of argumentation in terms of "probative obligations" and their "alignment/realignment" (Kauffeld, 2007a, pp. 72-73), but this terminological preference does not stand in the way of recognizing that Godden and Walton pose important challenges.

In response, I will first attempt to clarify the nature and structure of ordinary presumptive inferences. I will then argue such inferences can accommodate the defeasible nature of claims advanced in day-to-day arguments, and (2) they afford appropriate links to "burdens of proof."

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<sup>1</sup> Of course I recognize that an analysis of our concept of presuming involves some idealization. Our practices and the world at large are often messier, more complicated and less clearly delineated than our concepts; moreover, our concepts are not always available to us in the stark clarity which they acquire under the bright light of careful analysis. Nevertheless, it is possible to unpack the essential components of, e.g., our conception of 'presuming' and 'presumption' by semantic analysis of the cognate terms and, given the substantive supposition that we do sometime speak the truth when we use those terms, we can infer the minimally necessary components of pragmatically successful instances of presuming and presumption. Treating those instances as basic paradigms, we can then look for such order as obtains in the larger complex world of day-to-day practice.

<sup>2</sup> I speak of "ordinary acts of presuming" and their products, our "day-to-day presumptions," as distinct from the technical conceptions of presumption enshrined in legal argumentation and terms of art inherited in traditions of rhetoric and dialectic.

## 2. THE COMMITMENT STRUCTURE OF ORDINARY PRESUMPTIONS

Godden and Walton characterize my explication of presumption as an “expectation-based account.” They then argue that expectation-based accounts (and mine in particular) confuse presumption and prediction and, so, have severe limitations (2007, pp. 322-323). Their designation, however, misrepresents both my analysis and our ordinary conception of presumption. While our ordinary conception of and practice of presuming things does involve expectations, our day-to-day understanding of presumption is *based* on commitments, rights, entitlements, etc. which warrant those expectations. 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, retribution, 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:

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. (2003, emphasis newly supplied)

Presumptions rest on the efficacy of what T. M. Scanlon describes as “moral motivation.”

When I reflect on the reason that the wrongness of an action seems to supply not to do it, the best description of this reason I can come up with has to do with the relation to others that such acts would put me in: the sense that others could reasonably object to what I do (whether or not they would actually do so) [...] (T)he ideal of justifiability to others plays a large enough role in our practical reasoning to enable it to account for the complexities of “moral motivation.” [...] Being moral in the sense of “the morality of right and wrong” involves not just being moved to avoid certain actions “because they would be wrong,” but also being moved by more concrete considerations such as “she’s counting on me” or “he needs my help” or “doing that would put them in danger. (Scanlon 1998, pp. 155-156).

The practical calculations which, according to Scanlon, provide an agent with moral motivation can also figure into the calculations of others who may be in some co-dependent relationship with that agent. 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. We ordinarily identify such suppositions based on an agent’s commitments as “presumptions.” Given such suppositions we commonly take a second inferential step and presume, e. g., that the agent will return the tool she has borrowed, that her statement is true, that she is providing appropriate care for her aging parents, and

so on. Commitments provide the basis for presumptive inferences; such inferences commonly issue in expectations.<sup>3</sup>

Whatever its merits, this analysis does not represent presumptions as “expectation-based;” rather it shows ordinary acts of presuming to be based on obligations, entitlements, and the risk of resentment which accompanies such commitments. It would properly be referred to as a “commitment-based” account. Ordinary acts of presuming may well (often do) conclude in expectations. However, to designate such acts of inferring as “expectation-based” misleadingly identifies their structure by focusing on the conclusion to such inferences and directs our attention away from what warrants presumptions. Persistent preoccupation with features of the conclusion to presumptive inference has long obscured its underlying structure (Kauffeld, 2003).

### 3. CAN ORDINARY COMMITMENT-BASED PRESUMPTIONS SUPPORT ARGUMENTATION ADDRESSED TO DEFEASIBLE CLAIMS?

Our understanding of defeasible reasons, claims, inferences comes from reflection on legal argumentation. H. L. A. Hart explains the defeasible structure of legal arguments; in terms of the challenges which be mounted against their claims.

For the accusations or claims upon which law courts adjudicate can usually be challenged or opposed in two ways. First, by a denial of the facts upon which they are based [...] and second by something quite different, namely, a plea that although all the circumstance on which a claim could succeed are present, yet in the particular case, the claim or accusation should not succeed because other circumstances are present which brings the case under some recognized head of exception, the effect of which is either to defeat the claim or accusation altogether or to ‘reduce’ it so that only a weaker claim can be sustained. (Hart 1965, p. 154)

Defeasibility is a property of a variety of propositions regarding human action, including claims about responsibility and culpability, claims about what should or will be done in future situations, and claims about the respect due to achievements (Geach 1966; Hart 1965; Kenny 1966).

Godden and Walton maintain that commitment-based (expectation-based) views of presumption cannot accommodate the defeasible nature of claims advanced in day-to-day argumentation. By implication such presumptions could not support the ordinary defeasible argumentation. This is a serious charge. If ordinary presuming and presumption have the alleged limitations, then either some reform of ordinary practice would seem to be in order or Kauffeld has not adequately explicated what we plainly do when we presume things.

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<sup>3</sup> I have defended this analysis of presumption at length elsewhere (1995, 2003). The conditions it posits as essential to presuming can be seen on analytical grounds to be necessary and sufficient to identifying ordinary acts of presuming and their products, presumptions. The analysis also enables us to distinguish between presumption and their near relative, assumptions. And the analysis affords insight into the pragmatics of such argumentatively significant communicative acts as proposing, accusing, advising, answering criticism, and so on. Given these merits, this analysis provides grounds for claiming that achieves what it purports to represent, i. e., the essential components of ordinary acts of presuming. It may, of course, be mistaken.

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Their critique starts from the case of the lazy soldier.

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 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. (2007, p. 323)

From this case Godden and Walton conclude:

[...] [O]n Kauffeld's model, unjustified presumptions retain their presumptive status. The fact that a person is not likely to do something does not change the fact that he ought to. And since it is these obligations that underwrite Kauffeld's presumptions, they do not disappear in the face of empirical evidence against their being fulfilled—indeed, they do not even seem to be responsive to contrary evidence of this sort. Because they are based primarily on social obligations, expectation based presumptions are not defeasible in the right sorts of ways. (p. 323 )

As we consider this argument and its supporting example, it will be useful to follow a suggestion offered by Godden and Walton later in their essay and to recognize a distinction, drawn by Hans Hansen, between the presumed status of a proposition and the proposition presumed (Godden & Walton 2007, p. 340; Hansen 2003). In the example of the lazy soldier the presumed status of the proposition is that one is entitled to expect that the Smith (the soldier) will raise the flag; the proposition presumed is that Smith will raise the flag. This is a useful distinction; however, it focuses exclusively on the conclusion to (the claim advanced by) a presumptive inference and neglects the grounds and warrants for such inferences. We also need to consider whether the inferential structure for the presumption is defeasible: let us say that we have been told by Smith's commander that she is going to assign Smith the duty of raising the flag. Given that Smith has this obligation, we have reason to believe that he risks sure reprobation and punishment should he fail to raise the flag. This supposition warrants the belief that Smith has adequate moral motivation to raise the flag. Accordingly, we may presume that Smith will act responsibly, i.e. that he will obey the command and raise the flag. By this route we may come to presume that Smith will make it the case that the flag is raised. In what respects is this chain of inferences defeasible?

As a first attempt to answer this question consider some variants on the case of the soldier and the flag. The conversation in each variant begins:

A says, 'I presume that Smith will raise the flag.'

B asks, 'On what grounds?'

A responds, 'His commander told me that she is going to assign Smith the duty of raising the flag.'

### Type A situations

#### Case A1

*B* responds<sub>a</sub>, 'Don't be so sure about that. Smith is notoriously lazy and discipline on this base is very lax.'

*A* answers<sub>b</sub>, 'Well something should be done about that.'

Case A2

*B* responds<sub>a</sub>, 'Don't count on that. Smith is a belligerent type; he would rather scrub the toilets than accede to his commander's orders.'

*A* responds<sub>b</sub>, 'His commander will take care of that.'

These episodes are expanded versions of Godden and Walton's case of the lazy soldier. In both, *B*'s responses challenge the presumption that Smith will act responsibly and make it the case that he has raised the flag. In each case we might continue to presume that Smith will raise the flag and are entitled to that presumption, even though we may have observationally based knowledge warranting belief that Smith will not. We would not regard the proposition presumed as a reliable prediction.

Type B situations

Case B1

*B* responds<sub>a</sub>, 'However that may be, the flags have been stolen.'

*A* asks<sub>b</sub>, 'Does Smith's commander know that?'

Case B2

*B* responds<sub>a</sub>, 'Don't so sure. Smith has acute narcolepsy.'

*A* responds<sub>b</sub>, 'Does Smith commander know that?'

In these cases *B*'s responses challenge the supposition that the commander's order creates an obligation binding on Smith which requires that he raise the flag. In both cases such an obligation would require Smith to do what he cannot do. Accordingly, he does not risk serious criticism and reprobation for failing to raise the flag; at the very least Smith would have a reasonable excuse for not raising the flag. The situation is not one in which he would have efficacious moral motivation. Here *B*'s objections defeat the presumption that acting responsibly requires Smith to raise the flag. And also defeat the proposition that Smith will raise the flag.

Type C situations

Case C1

*B* responds<sub>a</sub> 'Don't count on that. Smith's commander has been on a bender and has failed to post his orders.'

*A* observes<sub>b</sub>, 'Then Smith could not know he is supposed to raise the flag.'

Case C2

*B* responds<sub>a</sub>, 'You cannot believe that; Smith's commander is a notorious liar.'

*A* answers<sub>b</sub> 'Poor Smith.'

In these cases *B*'s responses challenge the grounds on which the presumption rests. They deny that what Smith's commander told *A* is a reliable basis for *A*'s inferences. These

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challenges overturn (or substantially weaken) both the presumptive status of the proposition and its predictive value. Suppose that the conversation in C1 goes as follows:

A says: 'Thank god, the flag will be raised tomorrow; Smith has been assigned the job, and he is very responsible.'

B: responds: 'Don't be so sure, his commanding officer has gone on a bender and has failed to post Smith's assignment.'

A. 'My goodness! Does Smith know?'

Taken together these cases show (i) that the inferences ordinarily supporting a proposition's presumptive status are thoroughly defeasible and (ii) that challenges to the presumptive status of a proposition in type B and type C cases also call into question the predictive acceptability of the presumed proposition. So, the claim that ordinary commitment based presumptions are not defeasible with respect to empirical evidence is not supported by appropriate elaboration of the case supporting Godden and Walton's claim.

Consider now the other component in their claim, *viz.*, that should commitment based presumptions turn out to be defeasible, then they are not defeasible in the right sort of way, i.e., in a way related to how such inferences can be managed in epistemically significant argumentation. Response to this claim requires further reflection on Type A situations.

It may seem odd that grounds which entitle A to expect that the Smith will raise the flag warrant that entitlement and also give A compelling reason to suppose Smith will not live up to his responsibilities and raise the flag. Situations with this peculiar duality are common and call for explanation. A teacher, for example, might say to her class, "Your papers are due tomorrow, and I presume that you will all have them in on time," knowing full well that several members of the class routinely turn their papers in late. Her notification may nevertheless be both sound and useful. It puts the class on notice and warrants her application of sanctions to tardy papers. G. E. M. Anscombe's account of knowledge of and related to intentional act casts clarifying light on what seems to be the oddity in these commonly occurring cases.

Anscombe shows that this duality in which the acceptability of a presumed proposition can be evaluated from two distinct orientations is inherent in our knowledge of intentional acts and in our ordinary reasoning and arguing about human conduct. We are commonly justified in accepting propositions regarding human acts which are from a predictive point of view false; in such cases, as G. E. Anscombe has shown, the error lies in action itself not in our intentional knowledge of that act.

Let us consider a man going round town with a shopping list in his hand. Now it is clear that the relation of this list to the thing he actually buys is one and the same whether his wife gave him the list or it is his own list; and that there is a different relation when a list is made by a detective following him about. If he made the list himself, it was an expression of intention; if his wife gave it him, it has the role of an order. What then is the identical relation to what happens, in the order and the intention, which is not shared by the record? It is precisely this: if the list and the things that the man actually buys do not agree, and if this and this alone constitutes a *mistake*, then the mistake is not in the list but in the man's performance (if his wife were to say: 'Look, it says butter

and you have bought margarine,' he would hardly reply: 'What a mistake! We must put that right' and alter the word on the list to 'margarine'); whereas if the detective's record and what the man actually buys do not agree, then the mistake is in the record. (p. 56)

Although the cases involving our flag-raising soldier are more complicated, their parallels to Anscombe's example are enlightening.

Where circumstances stand to defeat a presumptive claim, we may treat the conclusion to the inference in ways which are analogous to a defect in the observation-based list drawn up by Anscombe's detective. We may, that is, correct the presumed conclusion. Or we (and in many cases this would be the more important option) can attempt to correct the circumstances which challenge the presumptive status of the conclusion. Thus in C1 above, we might set out to find Smith and tell him that his commander has assigned him flag raising duty, thus obviating the possibility that a hung-over commander would upbraid Smith for failing to raise the flag. Or in B1 above, we might notify the commander (or other appropriate officer) that the flags have been stolen so that the situation can be corrected and Smith can get the flag up. And in situations A1 and A2 Smith's commander may take steps to correct the situation. This she can do in various ways. The commander can assign the lazy soldier some obnoxious core (cleaning the latrines) as a penalty for failing to raise the flag and can make it clear that even stiffer penalties will follow repetition of that failure. And/or the commander can make certain the lazy soldier knows that the commander will be in a position to recognize any failure the soldier might make regarding his flag-raising duties, e.g., the commander might assign a more responsible soldier the task of overseeing the lazy soldier's execution of his flag waving duties, or the commander might require that the lazy soldier report directly to the commander prior to raising the flag. Or the commander might toss the lazy soldier in the brig and, having made an example of him, assign another soldier the duty of raising the flag. Many such steps could be taken to correct the soldier's estimate of the risk of resentment, punishment, etc. that he runs should he fail to raise the flag and/or the risk related calculation of the soldier's comrades. Thus, we have cases in which we adhere to the presumed status of a presumptive conclusion as part of a larger effort to correct the circumstances which weaken the moral motivation on which that inference rests.

We have seen cases in which a 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—cases in which circumstances effect the moral motivation on which the presumption rests. These cases point to a general potential for strengthening or weakening ordinary presumptions. For example, if we have reason to doubt whether a borrower will return the item he borrows simply in view of the resentment we would express should he fail to do so, we may up the cost of failure by requiring a deposit, or we may enhance the certainty that such failure will be recognized by conspicuously inscribing our name on the object borrowed, or we may remind the borrower that the last party who failed to return an item borrowed from us spent a fortnight in jail. On the other hand we may seriously weaken the presumption that the borrowed item will be promptly returned by giving the borrower to believe that we rarely, if ever, have use for the borrowed object and, so, are not seriously concerned about its timely return. In general presumptive inferences can be strengthened or weakened by modifying considerations relevant to the primary calculations of risk on which the presumed inference is based.

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This potential for strengthening presumptions by modifying the conditions which affect an agent's calculation of his risk of resentment is realized in a large class of inferences which I have called "special presumptions." Members of this class figure very importantly in ordinary argumentation.

Special presumptions are engaged by strategies in which an agent explicitly modifies the basis for an agent's risk-related calculations in order to induce others to attribute to that agent moral motivation upon which they can rely. Special presumptions can be engaged in such speech acts as proposing, accusing, answering criticism, etc.

These speech acts have in common the feature that the speaker openly incurs a obligation to answer questions related to some proposition the speaker wants her addressees to consider and/or adopt. By openly incurring that probative obligation the speaker manifestly vacates the possibility that she could deny or evade responsibility for answering questions, objections, etc. Accordingly, she strategically modifies the risk related calculation which she can reasonably expect others to attribute to her and, thereby, strengthens the presumption that she has something to say which will be worth her addressees' time and attention. Employing this strategy, a speaker advancing a defeasible proposition can create a context in others are warranted in considering that proposition.

We can see this possibility realized in King's "Letter from a Birmingham Jail." Here King openly speaks with the intention of answering criticisms from white clergy directed against his protest activities on behalf of civil rights (Kauffeld 2007b; King 2003, p. 777). The initial distribution of presumptions assumed by King can be reconstructed along these lines. King addresses answers to his clerical critics and ultimately to white moderates. Both King and his addressees presume that black citizens and white citizens should ultimately have equal civil rights, and both presume that black citizens have a right to work toward a world in which that equality is realized; accordingly, it might be presumed that black citizens have a right to vigorously assert those rights through what King calls "direct action" (sit-ins, protest marches, boycotts, etc.). The critical clergymen treat this presumption as defeasible and challenge it on several grounds, which King characterizes as claiming that King's protest activities are "unwise and untimely." King openly accepts an obligation to answer those challenges in terms that are "patient and reasonable." His commitment warrants a presumption to the effect that his answers deserve careful consideration. The case is a clear example of the capacity of ordinary presumption to support epistemically significant argumentation involving defeasible propositions.

#### 4. CAN ORDINARY COMMITMENT-BASED PRESUMPTIONS FACILITATE THE GENESIS AND REALIGNMENT OF PROBATIVE OBLIGATIONS IN DAY-TO-DAY ARGUMENTATION?

Godden and Walton would us have accept a negative answer to this question. They claim that commitment-based conceptions of presuming cannot elucidate shifts in the "burden of proof." By implication this claim suggests that corresponding practices of presuming cannot afford the connections between presumptions and probative obligations necessary to the (competent) conduct of day-to-day argumentation.

[...] although Kauffeld claims that his expectation-based model [commitment-based] does not decouple the ideas presumption and burden of proof, it is not clear that an expectation-based

model retains a picture of presumption where the effects are explained in terms of burden of proof. Rather, they seem to be explained in terms of obligations and entitlements, so if there are any argumentative devices that function to reverse the burden of proof this will require a good theory of these things, *and the expectation based account cannot provide it.* (2007, pp. 322-323 parenthetical elaboration and italics added)

This challenge raises complex questions, which ramify well beyond the scope of the present essay. We can, however, see that Godden and Walton do not provide adequate reason to doubt the capacity of ordinary presumption to support argumentative significant alignments in probative obligations. In the first place their conception of the pragmatically interesting relationship between presumptions and probative obligations underestimates the relevant resources ordinarily available in day-to-day argumentation; in the second place they do not take into account critically important ways in which probative obligation can be aligned and realigned in competent ordinary argumentation.

Godden and Walton suggest that a “good theory” of “any argumentative devices that function to reverse the burden of proof” must “retain a picture of presumption where effects are explained in terms of burden of proof” (2007, p. 323). It is not entirely clear what this requirement entails, but it seems reasonable to suppose that Godden and Walton have in mind something on the order of a Whatelian conception in which the existence of a presumption favouring a proposition (*p*) results in or has the effect of placing a “burden of proof” on parties who do not accept *p*. Explication of ordinary speech acts in which probative obligations are incurred relative to presumptions and critical analysis of argumentative discourse in which probative obligations are undertaken and/or generated reveal an array of relationships more complex the familiar Whatelian picture suggests.

Some standing presumptions, similar to the presumption of innocence in law, fit Godden and Walton’s picture.<sup>4</sup> However, the special presumptions discussed above do

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<sup>4</sup> Standing presumptions are generally available to arguers, given an appropriate set of conditions. Given a standing presumption of innocence established by the rules for legal pleading, whenever a party in law is charged with criminal wrong-doing that party is to be presumed innocent with the “effect” that the party bringing the charge has the “burden of proof.” We do commonly recognize standing presumptions on a day-to-day basis. As a matter of the respect due persons we routinely presume enlightened self-reliance and self-concern on the part of others, i.e., when it comes to determination which effect another’s interests, we presume that she will act primarily on the basis of her own thought and experience, and we ordinarily presume that a person will give due thought and attention to her concerns. One possible consequence of these standing presumptions is that they may figure in the practical calculations which lead speakers to openly incur burdens of proof. I would not pretend to comprehend the various ways in which standing presumptions figure into our practical calculation, but an immediately interesting potential is the role standing presumptions can play in the calculations which can lead a speaker to openly incur a probative obligation. This potential is apparent in paradigm cases of *proposing* and difficult cases of *advising*. Proposals are typically made where *S* wants *A* to consider some proposition *p*, which *A* regards or is likely to regard as not in *A*’s interests. In these circumstances, *S* needs prudently to presume the *A* will rely primarily on his own thought and experience and, so, will not be inclined to consider *p*. In these circumstances *S* may be able to induce *A* to at least tentatively consider what *S* has to say on behalf of her proposal by openly incurring a corresponding probative burden (Kauffeld 1998). Here we might be inclined to say that the effects of a presumption include a burden of proof, but it would be more accurate to say that here a standing presumption figures prominently in the practical calculations which lead a proposer to undertake a probative obligation. It certainly is not the case that here a presumption necessarily, inevitably, or even typically results in an arguer’s incurring a “burden of proof.” If the proposition *S* puts forward for *A*’s consider appeared to *A* to be his interest or to serve his interest, presuming self-reliance on *A*’s part

not. In making a proposal, for example, a speaker openly speaks with the intention of answering her addressee's doubts, questions, objections, etc. In doing so she manifestly risks criticism for wasting her addressee's time and attention should she not be prepared to satisfactorily answer the addressee's questions. She can thereby engage a special presumption that her proposal merits (tentative) consideration (Kauffeld 1998, 2003). In this type of case the speaker's manifest acceptance of a "burden of proof" results in a strategically engaged special presumption which, in favourable circumstances, may induce reluctant addressees to engage in a dialogue with the speaker. Here we see a relationship between presumptions and "burdens of proof" which is something like the reverse of the relationship which Godden and Walton seem to suppose is necessary to explaining how probative obligations can be realigned (burdens of proof can shift).

When we attend critically to competent argumentation in which special presumptions are strategically generated by openly undertaking probative obligations, we gain insight into how discharging such obligations can result in a realignment of presumptions and probative obligations. The alignment and realignment of probative obligations in Martin Luther King's "Letter from a Birmingham Jail" provide a convenient example.<sup>5</sup>

King's letter falls into two parts. In the first part he openly incurs and conspicuously discharges an obligation to the answer criticisms directed against him by fellow clergymen (pp. 777-784). This section of King's discourse provides a carefully reasoned body of argument which persuasively vindicates the protest activity for which he had been criticized and which very plausibly defends his status as patient, sincere and well intentioned Christian minister—a fellow clergyman. This discourse is patently designed to discharge his initial, self imposed probative obligation, i.e., to provide a patient and reasonable response to his critics, which shows his actions to be timely and wise and which merits careful consideration from sincere persons of good faith. Having presumptively discharged his initial probative obligation, the second part of King's letter expresses his disappointment with the failure of his white ministerial brothers, and of "moderates" in general, to support non-violent protest activities on the behalf of Black civil rights (2003, pp. 784-794). The overall structure of his appeal repeats this form: King expresses his disappointment at the failure of the white clergy to support this or that aspect of Black demands for and direct action on behalf of their civil rights. He purports to have expected that white ministers and moderates would support these actions as a matter of their avowal of Christian doctrines, their commitment to democratic principles, and their enlightened cultural heritage. Having presumptively established his status as a patient and reasonable man of good faith, King uses that status as platform from which to impose an obligation on his fellow clergy and white moderates to answer for their failure to support his cause. He is suffering harm in the form of profound disappointment,

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would not lead *S* to undertake a probative obligation. On the contrary *S* might here reasonably expect *A* to happily take up consideration of *p*. In this event *S* need not propose *p*; she might merely suggest that *p*.

<sup>5</sup>I presented a critical analysis of this Letter at the last Alta Conference on Argumentation (2007). A similar, if more complicated alignment and realignment of probative obligations can be traced in the Virginia Convention debates over ratification of the U.S. Constitution (Kauffeld 2002).

resulting from that failure on their part to fulfill expectations, which they as professed Christian leaders had aroused in King's breast.<sup>6</sup>

This case shows that where a speaker openly incurs a probative obligation and proceeds by means of her argumentation to (conspicuously) discharge that burden, she may in turn be in a position to impose on her addressee an obligation to carefully consider her arguments and either accept them or undertake a probative obligation to defend their rejection.<sup>7</sup> This is one of the ways in which probative obligations can be realigned—the burden of proof can be shifted.

## 5. CONCLUSION

I have been responding to criticism directed to my analysis of ordinary presumptions and explication of their pragmatic value in day-to-day arguments. My response has taken the form of a defence of plain presumptions as part of the structure of obligations within which we ordinarily conduct arguments.

I have maintained that ordinary presumptions are based on commitments. My argument in that connection calls attention inferential structure of presuming as contrasted with views which focus exclusively on features of a presumptive conclusion or claim. In defence of the pragmatic contribution ordinary presumptions make to day-to-day arguments, I have tried to show that presumptive inferences are thoroughly defeasible and 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. Underlying this line of defence is an important feature of presumptions, *viz.* that they can be strengthened or weakened by modifying the circumstances which generate relevant moral motivation. Finally, I have attempted to show that day-to-day special presumptions enable discursive structures within which probative obligations can be incurred and can be realigned.

The issues raised by Godden and Walton's critique go to the heart of the pragmatic value of presumption in the macro-structure of argumentation. Their critique opens a window for fuller consideration of these topics. My response provides some first steps toward an account of how plain presumptions enable arguers to manage defeasible propositions. I hope that they are good first steps. They do, I submit, introduce

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<sup>6</sup> My account of the realignment of probative obligations in this case relies on an analysis of obligations provided by: (Warnock 1971, pp. 94-117) .

<sup>7</sup> It might be objected that Godden and Walton provide a fundamentally correct picture about the relationship between presumptions and shift in the burden of proof as exemplified by King's "Letter," in that presumptions generated by King's discharging his initial "burden of proof" do ultimately result in his attempt to impose a corresponding probative obligation on his critics and white moderates. I do not think this objection saves Godden and Walton's criticism. They rather explicitly claim that commitment-based presumptions (in their terms, expectation-based presumptions), relying on obligations and entitlements cannot provide an account of "argumentative devices that function to reverse the burden of proof" (2007 p. 323). I submit that King's "Letter" and similar cases show that realignments in probative obligations can be achieved on the basis of "obligations and entitlements." Moreover, the realignment of probative obligations effected by King's "Letter" is not a simple and direct shift in the burden of proof (the "effects" of the presumptions established by King's argument cannot simply be explained in terms of the burden of proof); rather the presumptions King establishes by discharging his initial probative obligations put him in a position to demand that his addressees carefully consider his arguments and accept his conclusions or accept an obligation to justify their rejection.

## PRESUMING AND PRESUMPTION IN EVERYDAY ARGUMENTATION

considerations which need to be taken into account as we move toward a “robust theory” of presumptions in everyday argumentation.

DEDICATION: I should like to dedicate this paper to the memory of Peter Houtlosser, whose scholarly presence and wry smile will be sorely missed at this year’s OSSA gathering and at all foreseeable meetings of argumentation scholars.

[Link to commentary](#)

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