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On the Normativity of Presumptions: Contrasting Kauffeld’s and Whatelian Accounts

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Abstract: On a Whatelian conception, a presumption is a “supposition . . . [that] must stand good until some sufficient reason is adduced against it.” This view may be understood as operationalizing a distinct quality of warrant for the acceptability of claims. Against this Whatelian conception, Kauffeld offers an account on which “ordinary presumptions are inferences based on suppositions regarding the risk of resentment persons face should they fail to live up to (often openly incurred) commitments.” On Kauffeld’s analysis, presumptions are distinguished according to a special kind of backing, or grounding, upon which presumed claims are based. This article contrasts these views according to the different accounts each provides of the normative mechanisms at work in, and underwriting, warranted presumption. Viable argumentative norms must be both objectively well-founded and effective in regulating the activity of argumentation. Whatelian conceptions seek to explain the effectiveness (specifically, the binding force) of presumptions in terms of an arguer’s recognition of their well-foundedness by providing an account of presumptions as particularly well-adapted to methodological features inherent in the activity of transacting reasons. By contrast, Kauffeld’s analysis reverses this order of explanation, explaining the well-foundedness (specifically, the validity) of presumption and presumptive inference in terms of its effectiveness (specifically its binding force) over agents. By identifying a class of presumptions that are inherently, and extra-argumentatively, binding upon agents in ways that can manifestly influence their behavioral calculations to make it the case that what is presumed is so, Kauffeld’s analysis of presumption normatively generates well-foundedness out of effectiveness. Thus, a distinctive and innovative feature of Kauffeld’s analysis of presumption is that it identifies a hitherto unrecognized dimension of normativity—namely, our extra-argumentative obligations and our reactive attitudes concerning them—as capable of underwriting warranted presumptive inference.

Keywords: argumentation; argument norms; burden of proof; Fred J. Kauffeld; presumption

1. Introduction

1.1. Normative Problems for Argumentation

Argumentation is usefully understood as reasoning together (Godden 2019b): an interpersonal communicative activity wherein arguers transact reasons in order to collectively regulate their ongoing activities and achieve certain ends, whether shared or individual, such as managing disagreement. As such, normative theories of argument should supply norms of at least two kinds: guidance norms, i.e., rules by which reasoners can navigate their inferential undertakings such that they are conducted reasonably, and appraisal norms, i.e., standards specifying objective conditions of rational warrant. And, these norms should have at least two qualities: they should be well-founded and effective. Well-founded argumentative norms should be valid and methodologically adapted to argumentation. A norm is valid in the case in which it is accurate, i.e., it reliably and counterfactually tracks whatever property, value, or end it is intended to be a measure of, or a criterion for. (I use the term “validity” here in a way common among scientists but not among philosophers. What I here call “validity” epistemologists typically call “reliability.”) For example, rational acceptability (rather than, say, truth) is a valid norm for premise
acceptability just in case it reliably tracks cogency in argument. A norm is methodologically well-adapted just in case it can properly be applied in the context of (i.e., conforms to or can be fitted to) the procedural conditions and constraints under which reasoning and argumentation, by their nature, take place. For example, while it might be claimed that the norm that any contested contention (assertion) may be challenged is valid in that it is properly connected to achieving reasonable agreement, it has been claimed that this norm is methodologically ill-suited for our—indeed any—practice of transacting reasons, since, in practice, reasons cannot be offered for every claim made in any argumentative episode. Effective argumentative norms must be accessible to arguers, i.e., the norm may only cite conditions and criteria that arguers can apply themselves in regulating their acts of arguing—and they must have force over arguers—i.e., they must be binding upon arguers such that they hold themselves and each other accountable to them (Godden 2010, 2014).

While appraisal norms need not be effective in the way just described—they can reference criteria and conditions that are not accessible to the arguers whose reasoning is being evaluated and standards to which arguers themselves need not feel bound—the regulative function of guidance norms demands that they be effective.

Importantly, these two features of argumentative norms are independently satisfiable—which is to say, they can come apart. There can be cases where a norm has currency within a discursive community—which is to say that norm has force over its members; it is a norm to which they hold themselves and each other accountable—and yet, that norm does not track the properties that it ought to or is taken to. A practice that we deem superstitious is one we judge to be imbued with norms that are not well-founded yet are effective within the discursive communities practicing the superstition. In such cases, we would be inclined to say that those norms ought not to be binding upon, or have force over, the practitioners, because they are invalid. Moreover, in those situations, we would be inclined to say that other norms ought to have currency (i.e., be effective) in those discursive communities, precisely because we deem them to be well-founded. Very ordinary cases are ones where we recognize that a set of reasons were persuasive to some audience yet judge that they ought not to have been, and other cases where a set of reasons ought to have been persuasive to some audience but were not. So, there is no necessary or causal connection between the two dimensions of a reason’s persuasiveness or force.

1.2. Presumptions: Whatelian and Kauffeldian

This paper considers the interplay of these two dimensions of normativity as they bear upon presumptions in argumentative discourse. Specifically, I contrast two accounts of presumption, Fred Kauffeld’s and an account he called “Whatelian,” according to how they prioritize these two dimensions of normativity. On the reading I present in what follows, Whatelian accounts of presumption base the normativity of presumptions on their methodological well-adaptedness—prizing this over the validity of presumptive norms—and subsequently seek to base the norms of effectiveness for presumptions on these norms of well-foundedness. By contrast, I contend, Kauffeld’s analysis of presumption first seeks to explain the effectiveness of the normativity at work in the presumption, and subsequently seeks to base the well-foundedness of presumptions on their binding force on arguers.

As he engaged with traditions of theory and practice of forensic debate (e.g., Ehninger and Brockriede 2019; Goodnight 2019), the late Fred Kauffeld developed his innovative account of presumption in contrast to theories he labeled “Whatelian” (Kauffeld 1998). On a Whatelian conception, a presumption is a “supposition . . . [that] must stand good until some sufficient reason is adduced against it” (Whately [1846] 1963, p. 112). Kauffeld understood this Whatelian view as identifying presumption with a distinct quality of warrant for the acceptability of claims—namely one capable of shifting a burden of proof from a proponent (or assertor) to a respondent (or denier) of the presumed claim (Kauffeld 2019, p. 260). He took Whatelian views of presumption, and their accompanying account of burden of proof, to be widespread, predominant even, in argumentation theory. Proponents plausibly include Bermejo-Luque (2016, 2019), Bodlović (2017, 2020, 2021), Freeman (2005,
Godden (2015, 2017, 2019a), Katzav and Reed (2004), Lewiński (2017), Macagno and Walton (2012), Rescher (1977, 2006), Walton (1993, 1996, 2001, 2008, 2014, 2019), Godden and Walton (2007), and Toulmin [1958] (Toulmin [1958] 2003). Yet, Kauffeld consistently, and throughout the course of his writing on the topic, judged such Whatelian approaches to our ordinary practices of presuming, and their accompanying account of probative burdens, to be descriptively wanting in ways that occluded salient normative dimensions of our reasons-giving practices (Kauffeld 2019, p. 260). For example, in an early critique Kauffeld concluded:

In sum, Whately’s legal model for the burden of proof has not enabled argumentation theorists to formulate empirically and critically adequate accounts of how probative burdens arise in deliberation, nor has that model supported satisfactory identification of argumentative standards which deliberating agents must satisfy in order to discharge their probative responsibilities. (Kauffeld 1998, p. 246)

Kauffeld offered his own account as a corrective to these theories. Against Whatelian conceptions, Kauffeld offered an account on which “ordinary presumptions are inferences based on suppositions regarding the risk of resentment persons face should they fail to live up to (often openly incurred) commitments” (Kauffeld 2013, p. 2). On his conception, presumptions are not to be identified with a distinct quality of warrant but are instead to be distinguished according to a special kind of backing, or grounding, upon which presumed claims are based. As one anonymous reviewer rightly highlighted, another distinctive feature of Kauffeld’s account is that, by contrast with Whatelian accounts, his decouples the notions of presumption and burden of proof.

This article offers a reading of Kauffeld’s work on presumption that seeks to explicate one feature of his analysis of presumption which I take to be particularly normatively salient and innovative. As mentioned at the outset of the Introduction, argumentative norms—particularly those serving as guidance norms by which arguers can regulate their own argumentative undertakings—must have at least the qualities of well-foundedness and effectiveness. Whatelian conceptions of presumption, those predominantly studied and theorized by argumentation theorists, seek to explain the effectiveness (specifically, the binding force) of presumptions in terms of an arguer’s recognition of their well-foundedness. Since presumptions are typically acknowledged to be of questionable validity (i.e., their evidential bona-fides are typically taken to be wanting), Whatelian accounts have gone to great lengths to provide accounts of the well-adaptedness of presumptions to methodological features inherent in the activity of transacting reasons. The hope is that the methodological well-adaptedness of presumptions will make up for their shortcomings of validity. The next step in accounts of this sort explains the effectiveness of norms of presumption—their binding force—by citing arguers’ recognition of the well-foundedness of the presumption.

Kauffeld’s analysis, I contend, reverses this order of explanation, explaining the well-foundedness (specifically the validity) of presumption and presumptive inference in terms of its effectiveness (specifically its binding force) over agents. I take this to be a central, and understudied, innovation of Kauffeld’s analysis—one that explicates how extra-argumentative domains of normativity may be leveraged into service to underwrite specifically argumentative and inferential norms. Kauffeld’s analysis of what he called our ordinary concept of presumption and practices of presuming begins by identifying a dimension of extra-argumentative normativity that is inherently binding upon agents—namely, our extra-argumentative obligations and our reactive attitudes concerning them—hitherto unrecognized by argumentation theorists. His analysis proceeds to show, often by way of detailed case-specific considerations, how those normative elements can be made manifest, and even discursively manipulated, so as to affect the motivational reasoning and behavioral calculations of agents to do as they are obliged or expected. As a result, one may cogently presume that an agent will do as they are obliged or expected, precisely because they are committed to those extra-argumentative norms. In this way, Kauffeld’s analysis of presumption normatively generates well-foundedness out of effectiveness. Thus, a
distinctive and innovative feature of Kauffeld’s analysis of presumption is that it identifies a hitherto unrecognized dimension of normativity capable of underwriting warranted presumptive inference. In so doing, it reverses the standard order of explanation between well-foundedness and effectiveness found in Whatelian accounts, instead explaining the well-foundedness of presumption and presumptive inference in terms of the effectiveness of those extra-argumentative norms upon agents.

I might add that, in the past, I have taken issue with Kauffeld’s account. Indeed, I still harbor reservations about it. Yet, this is not the occasion for pursuing those lingering doubts. Here, I set aside those critical misgivings, to instead recognize and explicate, albeit belatedly, what I take to be a distinctive, singularly innovative, and underrecognized feature of Kauffeld’s analysis of presumption. In so doing I hope to widen our perspective, and deepen our understanding, of the sources and operation of norms in argumentative discourse.

In outline, the article proceeds as follows. Section 2 introduces a Whatelian conception of presumption as a modal qualifier, and surveys two mechanisms, inferential and non-inferential, for generating the distinctive presumptive quality of warrant. Section 3 argues for the utility of Whatelian presumptions, locating their claim to well-foundedness in the answers they provide to three procedural problems in argumentation: getting started, keeping going, and commitment monitoring. Section 4 sets out Kauffeld’s alternative conception of presumption, on which it is characterized by a distinctive kind of inferential backing he identified as operative in our ordinary practices of presuming. Section 5 identifies the force of presumptive warrants as a problem for Whatelian conceptions of presumption, and reviews two contemporary accounts of their binding force. It is then shown how Kauffeld’s presumptions are uniquely conceived to answer this problem. Conclusions are offered in Section 6.

2. A Whatelian Conception of Presumption

Kauffeld applied the label “Whatelian” to a family of views of presumption and burden of proof that he characterized as follows:

At their core, Whatelian conceptions define presumptions in relationship to the burden of proof: a presumption, the conclusion draw[n] in an inferential act of presuming, stands good until rebutted by parties who undertake an obligation to provide substantiated objection to its acceptance. Finally, according to Whatelian views, presumptions are inferences which, in the appropriate circumstances and given the appropriate facts, relevant persons are entitled to draw; the burden of proof which falls on persons who refuse to accept a warranted presumption is in the nature of an obligation. (Kauffeld 2003, p. 134)

As such, “Whatelian” should here be understood as a label for the family of views set out in Section 2, rather than as characterizing the views of Archbishop Whately. Importantly, then, this paper does not aspire to present or engage with Archbishop Richard Whately’s view of presumption, and it should not be read as a contribution to Whately scholarship. Rather, it engages with a family of views of presumption labeled “Whatelian” by Kauffeld.

2.1. Presumption as a Modality

On a Whatelian conception, to accept a claim presumptively—i.e., to accept that presumably, p—is to take p to be the case in some qualified but actionable sense. As L. Jonathan Cohen (1992) writes: “A presumption is typically what you may take for granted about a particular issue, in default of reasons against so doing” (p. 13). Here, presumptions are characterized as a modality qualifying commitment to the presumed claim, marking it as having a default, actionable but defeasible acceptability (Godden 2017, 2019a). While many such accounts hold that presumptive acceptances may have a doxastic, cognitive, or alethically-oriented valence, Godden (2017, 2019a) follows Ullmann-Margalit (1983) in denying that presumptive acceptance is properly understood along these lines.
2.2. Presumption and Burden of Proof

The counterpart to Whatelian presumptions is burden of proof. Whenever there is a presumption in favor of any supposition “the Burden of proof lies on the side of him who would dispute it” (Whately [1846] 1963, p. 112). As Nicholas Rescher describes it: “A presumption indicates that in the absence of specific counterindications we are able to accept how things ‘as a rule’ [i.e., by default] are taken as standing, and it places the burden of proof upon the adversary’s side” (Rescher 1977, p. 30; cf. 2006, p. 14).

Presumptions and burden of proof, then, are dialectical creatures; they function to allocate discursive obligations and entitlements. Standardly, burden of proof is explained in dialectical terms, as a conversational obligation: to bear the burden of proof in an argument is to have the responsibility of making a case by giving reasons (whether pro tanto or demonstrative) for one’s view in order to establish its acceptability (Walton 1988). So described, burden of proof “represent[s] a procedural or regulative principle of rationality in the conduct of argumentation” (Rescher 2006, p. 19). Yet, following Aijaz et al. (2013) we may distinguish attitudinal from dialectical burdens, where attitudinal burdens are probative obligations to possess adequate support for one’s commitments (whether articulated or not) and dialectical burdens are discursive obligations to provide adequate support for one’s claims (261f.). So understood, presumption marks a positive attitudinal entitlement that affects dialectical entitlements and obligations. A commitment’s presumptive acceptability discursively manifests as the right to require of objectors, and their concomitant obligation to the same, that: prior to one’s offering any reasons for the unqualified (i.e., non-presumptive) acceptability of the claim, that others either concede the claim or make a case against it.

These two thoughts, that burdens of proof are the counterparts to presumptions and that burdens of proof manifest as discursive obligations, combine to yield Pinto’s definition of presumption:

A proposition or statement has the status of a presumption at a given juncture of an interchange if and only if at that juncture any party who refuses to concede it is obliged to present an argument against it—that is to say, is obliged either to concede it or to make a case against it. (Pinto 2001, pp. 3–4; cf. Freeman 2005, pp. 26–30)

2.3. Inferentially Generated Presumptions

Generally, positive attitudinal entitlement may be generated in two ways: inferentially and non-inferentially. Inferentially generated presumptions result from inferring presumably, \( p \), on the basis of some other claim, \( r \), by relying on some presumptive rule or warrant. Presumptive inference, then, has the following basic structure (cf. Ullmann-Margalit 1983, 147f.; Hansen 2003, 3ff.; Godden and Walton 2007, pp. 331–32):

* Presumptive inference (on a Whatelian conception)

(P1) Premise 1. *Presumption Rule or Warrant*: If \( r \), then presumably, \( p \), unless \( d \)

(P2) Premise 2. *Presumption-Raising Claim (Antecedent/Base Claim)*: \( r \)

\[ \therefore \] (C) Conclusion. *Presumed Claim (the Presumption)*: Presumably, \( p \)

On this view, presumptive commitment and reasoning is tentative rather than tenacious. Presumptive acceptability (i.e., commitment to presumed claims) is uncertain and retractable. This affects the way presumed claims may be relied upon in subsequent reasoning (Godden 2017, 2019a). The uncertainty of presumed claims is due, in part, to the inherently risky nature of presumptive inference. The standard of connection in presumptive inference is defeasible rather than deductive, plausibilistic rather than probabilistic, and tentative rather than convincing. Yet, it may sufficiently establish \( p \)’s qualified but default and actionable acceptability, and thereby shift a probative burden about \( p \) to an objector. In view of this distinctive standard of connection, Blair (1999) claims that “presumptive reasoning/argument represents a sui generis class of reasoning/argument” (p. 56). Schematic arguments (Walton 1996; Walton et al. 2008) have been offered as exemplifying the distinctive quality of warrant that characterizes presumptive inference.
2.4. Basic Presumptions

If presumptions are only produced inferentially, then no presumptions are properly basic. Inference can only generate acceptability on the basis of the prior acceptability of certain claims (inferential inputs) and rules (inferential warrants).

Recognizing this, Freeman (2005) uses the notion of presumption to non-inferentially establish the primitive, or basic, acceptability of claims. First, acceptability is defined in terms of presumption: very roughly, a claim is acceptable just in case there is a presumption in its favor (p. 32). Freeman then argues that basic beliefs may be presumptively acceptable so long as they are grounded in, or generated by, some suitable source, understood as a belief-producing mechanism (p. 41). Freeman recognizes three basic classes of non-inferential sources for presumptively acceptable belief: personal belief generating mechanisms (e.g., the senses, memory), external or inter-personal sources (e.g., testimony, common knowledge), and plausibility-based presumptions (e.g., normalcy, simplicity, uniformity) (p. 41). Relying on Plantinga’s (1993) notion of warrant, Freeman contends that the presumptive acceptability of a basic belief may be source-based so long as the belief is properly warranted by the source. Here, proper warrant depends on four factors: (i) the proper functioning of the belief-producing mechanisms, (ii) its operation in a cognitive environment to which it is suited, (iii) the functional telos of the belief-producing mechanism is alethically-oriented (i.e., its functional purpose is to generate true beliefs), and (iv) the reliability of the mechanisms when operating in these conditions (Freeman 2005, pp. 42–44, 53f.). In this way, the presumptive acceptability of basic beliefs may be established.

Because the warranting relation at work in presumption-generating sources is taken to have roughly the same probative strength as the inferential connection obtainment in presumptive inference—namely, it confers a default, actionable but defeasible acceptability upon the resultant commitment—it too may be marked by the qualifier “presumably” without ambiguity. In each case, the meaning of the qualifier, and the resulting effects on probative entitlements and obligations, are the same. Presumptive warrant may then be understood generically to include both inferential and source-based warrants.

2.5. Pragmatic Backing of Whatelian Presumptions

Although Whatelian conceptions give a fairly standard account of the quality of presumptive warrant, there is less agreement on the kind of backing underwriting them. Nevertheless, one characteristic idea is that presumptions are warranted, at least partly, by practical or methodological considerations. Typically, a presumptive license or warrant is presented as deriving from the practical or methodological need to move forward with reasoned discourse, whether initially or in getting past some subsequent impasse. Rescher (2006), for example, argues that:

In the end all our presumptions are based on one fundamentally identical rationale of justification, namely functional efficacy in the particular context of operation in which the presumption figures. . . . The validity of a presumption accordingly pivots on two salient considerations: that a contrary presumption would be functionally impracticable, and that presumptive agnosticism would be counter-productive—that factual efficacy in respect to the project at issue would be gravely compromised if that presumption were dispensed with. . . . Thus what justifies our epistemic presumptions is a combination of utility with demonstrated effectiveness in serving the objectives of the correlative enterprise. (pp. 53–55; cf. 64)

Perhaps the clearest articulation of this pragmatic grounds for presumption view (cf. Godden 2015) is found in Douglas Walton’s (1992, 2008) dialogical theory of presumption. He writes: “[A] proposition can be tentatively accepted as having the status of presumption even though the evidence supporting it at that present point in the dialog is insufficient for accepting it. The reason for accepting it [is] typically a practical one” (pp. 234–35). Adapting Walton’s theory to the language of warrants adopted in this article, the last three conditions for a presumption that $p$ might be stated as follows:
i. \( p \) is not sufficiently warranted by the available evidence;

ii. there is a condition (e.g., a presumptive inference rule) that supplies an appropriate practical warrant for \( p \) (in the circumstance);

iii. when this practical warrant is factored in, \( p \) is sufficiently warranted to shift a local burden of proof to an objector.\(^2\)

So understood, presumptions are not merely claims supported by a prima facie case based on inconclusive evidence. Were we to possess a merely tentative justification for our commitment, we might mitigate or moderate our commitment to it accordingly by, for example, apportioning our credence to the claim according to the strength of the evidence we have for its truth, without thereby claiming a presumptive, burden-reversing entitlement to it (Godden 2017). Rather, cases for the well-foundedness of Whatelian presumptions typically draw upon claims of their methodological well-adaptedness, together with an explicit concession that the validity of the presumption might be substandard. For example, there is no need to presume what we may defensibly claim to know. If the validity of what we presume could be established, there would be no need to rely on its methodological well-adaptedness in making the case for its rational acceptability. Yet, the advocate of Whatelian presumptions routinely seeks to leverage a presumption’s methodological well-adaptedness against any deficiencies in its validity in making the case for its normative legitimacy. Walton, for example, routinely offered the need for making dialectical progress in some argumentative conversation as licensing the making of specific presumptions (see, e.g., Walton 2014, pp. 109, 115, 280). Against this, Godden argued that “the mere need to get on with things and bring an argumentative discussion to a close is not a good reason to distribute probative responsibilities one way rather than another” (Godden 2015, p. 102), particularly since allocations of probative entitlements and responsibilities “favor certain substantive outcomes” over others (Hahn and Oaksford 2007, p. 41). Thus, the well-adaptedness of a presumption is properly understood in relation to the outcome it favors rather than merely its procedural propriety or expediency. In view of these considerations, Godden (2015) took the dialectical expediency of Whatelian (in this instance, Waltonian) presumptions to come at the expense of their validity, thereby jeopardizing their normative well-foundedness. In other cases, the practical needs invoked to support the well-foundedness of some presumptive warrants are presented as procedural preconditions of inquiry or deliberation as activities of reasoning (e.g., Rescher 1977, 33ff, 2006; cf. Kauffeld and Freeman 2019; Freeman 2005, p. 14).

What should be emphasized at this juncture is that, on Whatelian accounts, the efficaciousness of presumptions—particularly their force over, or binding upon, discussants—is to be explained by the discussant’s recognition of their well-foundedness. Failures in the efficaciousness of some presumption occur as a result of discussants either failing or refusing to recognize the well-foundedness of the presumption. For this reason, justifications for Whatelian presumptions typically appealed to some value, end, or principle shared by the discussants involved.

For example, Kauffeld (1998) argued that Whatelian accounts of presumption draw upon the codified and institutionalized use of presumption in the law, in a problematic effort to explain our ordinary practices of presuming in everyday discourse.

The codification of probative responsibilities in law is a procedural expression of underlying principles of fairness … Whately assumed that requirements of fairness, or closely analogous principles, also govern the distribution of probative responsibilities in deliberation [i.e., our ordinary deliberative discourse]. (p. 246)

As we will see in more detail in Section 4, Kauffeld found such accounts of the normative efficaciousness of presumptions, and of probative burdens generally, to be not only wanting (i.e., incomplete), but defective (i.e., mistaken). And, not for the reason just noted—that the well-foundedness of a presumption is suspect when its validity is forsaken for its methodological well-adaptedness in the form of dialectical expediency. Instead, as will be explained in Section 4, Kauffeld sought to recognize a different source of normative
legitimacy for presumptions. Rather than explaining the force of a presumption over a discussant—i.e., the obligations the conversant holds themselves accountable to concerning some presumption or norm of presuming—in terms of the discussant’s recognition of well-foundedness in a presumption, Kauffeld sought to explain how, in our ordinary practices of presuming, the well-foundedness of a presumption, specifically its validity, may rightly be in explained in terms of—indeed may be founded upon—the force it has over the discussants.

2.6. Summary: The Normativity of Whatelian Presumptions

For now, let us summarize the basics of Whatelian presumptions, and review their discursive utility. The basic idea common to these theories is this: presumptions are conversational devices that facilitate the progress of argumentation, whether practical (deliberative) or theoretical (doxastic), in situations where the conclusion of an inference seems plausible, but the inference itself does not, on the applicable standard of evidence, sufficiently warrant drawing the conclusion on its basis. Should that conclusory claim promise to be of use in moving the argumentation forward, it may be presumptively concluded even in the absence of sufficient proof on the basis of the available evidence and in the absence of any evidence counting against the conclusory claim. Such claims enjoy a conversational status of presumptive acceptability: they become tentative commitments of the discussants, thereby allowing the argumentation to proceed and obliging objectors (including discussants who would subsequently retract their commitment) to the presumption to make a suitably compelling case against it. In this way, even if a claim is only minimally supported by the evidence, it may be tentatively accepted as a presumption, subject to retraction should information subsequently come to light indicating that the presumption is mistaken. Common to all such approaches is the thought that, in making a presumption, reasoners relax a burden of proof in order to allow argumentation to move forward, by lowering a standard of proof on an ad-hoc basis. When this happens, the presumed claim becomes a commitment with a “reverse” burden of proof for all discussants. Those seeking to deny the presumed claim or retract commitment to it are obliged to refute the presumption.

As we will see in more detail in Section 3, the well-foundedness of the norms of presumption on this type of account derive primarily from their methodological well-adaptedness rather than their validity. Indeed, the norms of presumption only come into effect when properly valid norms are inaccessible. Presumptions, and the norms licensing them, are satisficing argumentative devices rather than optimizing ones. The effectiveness of the norms of presumption, then, derive from practical need of discussants to get on with the task of argumentation, and their extra-argumentative projects that depend on the outcome of argumentation. The norms of presumption are inherently accessible to arguers, since they involve only the available evidence and projects and ends of argumentation itself. The norms of presumption are binding on arguers just to the extent that they are committed to the process and ends of argumentation, and the urgency of moving beyond whatever uncertainties are currently impeding its progress at the risk of being mistaken. That is, they have to prioritize getting on with things over getting it right—at least for the time being.

3. The Utility of Whatelian Presumptions

Whatelian presumptions have been presented as well-founded because they are methodologically well-adapted. That is, roughly, presumptions can solve three important problems for arguers in regulating their rational undertakings: (i) getting started, (ii) keeping moving, and (iii) commitment monitoring.

3.1. Getting Started

All argumentation must start from somewhere if it is to get anywhere. This procedural precondition requires a default, if defeasible, acceptability of at least some claims and warrants. As Rescher (1977) writes:
Clearly, if the burden of proof inclined against every contention—if there were an automatic presumption against every contention whatsoever—it would become in principle impossible ever to provide a persuasive case. The rule that each contention needs evidential support through the adducing of further substantiating contentions cannot reasonably be made operative ad infinitum. (p. 33)

In our everyday acts of reasoning and argument, not every claim’s acceptability can be based upon the prior acceptance of some set of supporting reasons. Thus, in practice it cannot be permitted that every claim is subject to challenge. Rather, on any particular argumentative occasion, some claims must be accepted, if only as starting places, on some other basis. Taking some claims to be presumptively acceptable addresses this procedural problem within the very activity of reasoning. Again, as Rescher (1977) writes:

The mechanism of presumption thus accomplishes a crucial epistemological task in the structure of rational argumentation. For there must clearly be some class of claims that are allowed at least pro tem to enter acceptably into the framework of argumentation, because if everything were contested then the process of inquiry could not progress at all. (Rescher 1977, p. 34; cf. 2006, p. 24)

In practice, we start from where we are, beginning with what we presently accept or what we agree upon. Yet, this descriptive criterion will not suffice for sound beginnings, since not everything that we accept or agree upon merits acceptance or agreement. As such, theorists like Rescher (2006) and Freeman (2005) seek to articulate the kinds of sources and considerations that can provide well-founded presumptive warrants for our basic, if tentative, beliefs. Were such an account to succeed, the hope, as Rescher (2006) puts it, is that “presumptively justified beliefs are quite sufficient to provide the raw materials for processes of rational deliberation” (p. 25).

3.2. Keeping Moving

Having identified the raw materials for their rational undertakings, arguers next face the potential problem of running out of inferential resources (inputs and rules) before getting where they need to go.

In purely theoretical endeavors, deficits of evidence or inferential license should deliver arguers to an indeterminate state where judgment is withheld until sufficient evidence is discovered to settle the matter. Yet, circumstances might require that, rather than pursue a search for determinative evidence, arguers bring their activities of deliberation or inquiry to a conclusion and arrive at some position or another, if only provisionally, so that further action can be taken. For Walton (2008): “It’s precisely in this kind of case where the notion of presumption comes in” (Rescher 1977, p. 234; cf. Walton 1996; Godden 2015). Yet, the mere need to get somewhere does not license going one way rather than another. Rather, if presumptions are to favor any particular outcome over others, they should do so for principled reasons (Godden 2015, p. 102). There are at least two ways that arguers might proceed here, and Walton’s account often seems indifferent between them.

One way is to act only on the basis of available evidence, however insufficient, and to proceed tentatively. Thus, thresholds of acceptability might be lowered to allow the acceptance of claims as conjectures rather than commitments. Here, inferential progress is made by relying on defeasible epistemic warrants, prima facie evidential cases, and the absence of contravening evidence, in ways that resemble the prescribed use of schematic arguments. Yet, proceeding in this way does not change the distributive mechanism, which remains exclusively epistemic, by which probative obligations and entitlements are allocated. What changes are the standards required to discharge epistemic obligations or gain epistemic entitlements. Local burdens of proof shift because local standards of evidence have been lowered.

An alternative way of proceeding in such circumstances is to invoke a new class of specifically presumptive warrants whose legitimacy at least partly derives from some non-epistemic goal of the endeavor (Ullmann-Margalit 1983; Godden 2017, 2019a). Reliance upon such warrants on some occasion may then be justified by the practical need for
resolution in evidentially under-determined cases. For example: the law prizes justice over truth; medicine prioritizes the ends of health and wellbeing over scientific knowledge; and, engineering aims at success in some environment over getting the facts exactly right. In endeavors like these, verisimilitude is an acceptable compromise to truth whenever some other legitimate goal is thereby achieved. Taking these goals into account can supply a new class of warranting principles, presumptive warrants, licensing a new set of warranted claims, presumptions. Invoking the non-alethic goals of a discursive activity thereby creates new distributive mechanisms for probative obligations over reasoners. Purely epistemic entitlements and obligations are allocated solely on the basis of evidential considerations. More broadly probative entitlements and obligations may be allocated on the basis of other overriding but non-epistemic ends. That a case for $p$ satisfies some proper non-alethic aim warrants $p$’s presumptive acceptability, and obliges objectors, when beholden to that same end, to undertake probative burdens to which they would not otherwise be bound. Understood in this way, presumptions do not merely warrant the shifting of a local burden of proof by adjusting the criterial settings of a given standard. Rather, they affect a redistribution of probative obligations and entitlements according to a different set of standards that may reference entirely new norms, ends, values, conditions, and criteria.

3.3. Commitment Monitoring

A third benefit of Whatelian presumptions results from their role as modal qualifiers and speaks to the problem of tracking our differing entitlements and commitments to claims used in reasoning.

In defeasible theoretical (i.e., truth-oriented) reasoning, tracking the status of claims is important for at least two reasons best appreciated by comparison to cases of non-defeasible reasoning. In non-defeasible reasoning, claims are non-retractable (i.e., once a claim is introduced, as a premise or by proof, it is never withdrawn), and valid inferences are truth-preserving (i.e., not susceptible to counter example by new information consistent with stated premises). Under these conditions, once a claim is correctly inferred, that inference, and hence the conclusion drawn from it, will hold good come what may. Yet, in ordinary contexts of reasoning and argumentation neither of these conditions typically hold. Claims are retractable: we can learn that we were mistaken in believing something and withdraw commitment from it. And, inferences are defeasible: we can learn new information, consistent with our stated premises, which can defeat some previous inference, prompting us to withdraw commitment from the inferred conclusion. Indeed, ordinarily we reason with both kinds of claims (retractable and non-retractable) and inferences (defeasible and non-defeasible) simultaneously in complex inferential/argumentative acts or activities, and this makes tracking the statuses of the claims with which we reason, and the results of our reasonings, particularly important.

This picture is further complicated if it is allowed that claims can have attitudinal or discursive but non-doxastic statuses. If, for example, presumption is a defeasible deliberative, but non-epistemic, modality (licensing the use of presumptions in practical but not theoretical inference, as Ullmann-Margalit (1983) and Godden (2017, 2019a) suggest), then marking and tracking the presumptive and other modalities of claims in reasoning becomes all the more important.

In such contexts, marking the probative statuses of claims is vital for tracking how they were established and may properly be used. The modality “presumably, $p$” indicates that $p$ enjoys a limited, defeasible, yet actionable, acceptability which is contingent upon, and constrained by, the warrant for $p$, its undefeated standing, and the legitimacy of the non-epistemic ends backing the presumptive warrant.

3.4. Whatelian Well-Foundedness

In general, then, the justification of Whatelian presumptions as well-founded argumentative norms derives from their methodological well-adaptedness to the procedural preconditions and constraints of argumentation as an activity of reasoning. Further, insofar
as the warranting conditions of presumptions are accessible to arguers, presumptions also promise to play an important role in the effective regulation of the arguers’ inferential undertakings.

4. Kauffeld’s Analysis of Presumption and Presuming

4.1. A Difference in Normative Focus

Kauffeld (2003) characterized Whatelian presumptions not according to the distinctive quality of warrant upon which their acceptability is based, but according to the qualifier that subsequently attaches to presumed claims (136ff.). For Kauffeld, this focus on presumption as a commitment qualifier obscures the underlying structure of presumptive inference, as it is exhibited in our ordinary practices of presuming, by misleadingly directing our attention away from its properly distinctive feature: “the grounds and principles of reason that generally warrant presumptive inferences in the conduct of day-to-day thought and discourse” (p. 138). Rather than seeking a singular quality of warrant by which to identify presumptions, Kauffeld identified a singular kind of backing for presumptive warrantedness.

4.2. Presumption as a Distinct Backing for Inference

Kauffeld consistently presented his perspective as an analysis of our ordinary concepts and practices of presuming and presumption. To identify a distinctively presumptive kind of backing, Kauffeld (1995) distinguished “one broad class of inferences [that] are based primarily on the facts of the case and . . . a second . . . based primarily on facts and suppositions about the social context in which the inference is drawn” (p. 509). Within this second class, Kauffeld distinguished between assumptions and presumptions, claiming that both “characteristically operate where more substantive reasons for accepting a proposition, when available, leave us less than certain. If the facts of the case provide good and sufficient reason to believe that \( p \), there would be little call to assume or presume \( p \)” (p. 509). For Kauffeld, “Both assumptions and presumptions may be evaluated in terms of whether they are reasonable, warranted, and justifiable, through considerations which make an assumption reasonable differ for those which warrant a presumption” (p. 509).

Presumptions are then distinguished from assumptions as follows: while “an assumption is something one takes upon oneself in that typically one bears singular responsibility for the adequacy of what one assumes” (p. 509), by contrast “we regard presumptions as suppositions to which we are entitled because typically it is incumbent upon someone else to make them true” (Kauffeld 1995, pp. 509, 511; cf. 2003, p. 142). More specifically, Kauffeld (1995) contended:

To presume that \( p \), . . . a person must come to hold that \( p \) by reason of the supposition that some person has or will have made it the case that \( p \) rather than risk resentment for acting otherwise. . . . Assumptions, on the other hand, are inferred on something like this basis: in the present circumstance \( p \) may (safely) be taken as being true because no relevant party is likely to raise compelling objections or doubts regarding \( p \). (pp. 510–11)

Rather than consider presumptions in the abstract, Kauffeld’s ordinary language methodology led him to resist abstract theorizing and instead take a more rhetorically-oriented approach (Kauffeld 2019; Kauffeld and Freeman 2019) that sought to analyze particular cases of presuming. These analyses led Kauffeld to identify a distinctive normative mechanism at work in our ordinary presumptive practices.

Analysis of our ordinary concepts and corresponding practices shows that presumptions . . . come to hand by virtue of reasons that have a rather definite form. The superior presumes that his subordinate will comply rather than risk reprobation for disobedience. . . . In each of these examples something is taken to be the case on the grounds that someone has or will have made that the case rather than risk resentment, criticism, reprobation, loss of esteem, or even punishment for
failing to do so. Here we find the defining mark of presumption. (Kauffeld 1995, p. 510; cf. 2003, p. 140; 2009a, p. 3; 2013, p. 5; 2019, p. 260)

Kauffeld consistently held this view of the conditions that “warrant the normative aspect of presumptive inferences” (Kauffeld 2019, p. 260) throughout his writings on the topic. Among his last published writings on the topic is his essay “A rhetorically oriented account of presumption and probative obligations” (Kauffeld 2019). There one finds Kauffeld to have written that “careful reflection on presumption itself reveals a core structure to this kind of inference [i.e., presumptive inference]. A presumption is an inference based on the supposition that someone will have made it the case that \( p \) [i.e., presumed], rather than risk criticism, resentment, punishment, etc. for failing to do so” (p. 260). In 2013 Kauffeld specified his analysis of presumption as follows:

I [Kauffeld] represent the minimal structure of presumptive inference as having three components:

1. the supposition that some agent (Ag) has an obligation or other commitment owing to some other agent(s) and/or to herself that Ag is to do \( x \);
2. the supposition that, Ag has made, is making, or will make it the case that Ag has done \( x \), rather than risk resentment, retribution, etc. for failing to do \( x \); and
3. the inferred conclusion that Ag has done, is doing, or will do \( x \). (Kauffeld 2013, p. 5; cf. 1995, p. 10; 2003, p. 140; 2009a, p. 3)

4.3. Possible Motivations for a Kauffeldian Account

Having noted the distinctive grounds that, on Kauffeld’s analysis, properly underwrite our ordinary practices of presumption and presumptive inference, the question remains: why the interest in this peculiar kind of warranting ground? Why focus on a putative source of inferential entitlement grounded in the obligations of others to do something (or make something the case), or risk resentment for failing to do so? Answers to these questions are, I suggest, best appreciated when seen in the context of a failure of Whatelian accounts of presumption.

5. Presumptions and Their Sources of Normative Binding

5.1. Binding and Deference: A Criticism of Whatelian Presumptions

Argumentative guidance norms must be binding upon arguers in order to effectively regulate their inferential undertakings. Yet, Whatelian presumptions have been accused of lacking adequate force in ordinary argumentative situations.

Charges along these lines were first brought against Whately’s own presentation of presumption, by Sidgwick (1884) in his *Fallacies*. There, Sidgwick charged that the normative force of presumptions over reasoners depends, on Whately’s account, too much on the institutional contexts in which Whately conceives of presumptions as being deployed. Those institutions do not merely provide the situational contexts in which reasoning and argumentation occurs. Rather, they embody highly regulated structures of procedure, authority, and discipline. Yet, those same structures are mere facades of normativity when invoked outside of their argumentative jurisdiction. Godden (2010) introduces the notion of the jurisdiction of argumentation in order to demarcate “the domain over which argumentative rules have normative force,” claiming that “that argumentative commitments are binding only within the jurisdiction of argumentation” (p. 412). Sidgwick wrote:

Convenient, however, as such a plan may be where there is an authority competent to frame the rules, it is obvious that outside certain artificial institutions, existing for some special purposes, no such authority exists. Argument in general cannot undertake to be bound by what this man or the other, or any body of men, may happen to consider a ‘fair presumption.’ (Sidgwick 1884, pp. 159–60)
When confined to institutional contexts, institutional normative mechanisms can have regulative force, but outside of those contexts that regulative force is lost. As such, if the binding force of presumptions derives at all from the structures of particular institutions, then those presumptions cease to be effectively binding on reasoners and arguers beyond the regulative walls of the institution. Hansen (2003) observes Sidgwick to have argued that: “outside the law, argumentation lacked the very stuff that makes the use of presumptions feasible within legal reasoning” (pp. 4, 6–7). As such, in the public spheres of ordinary, day-to-day argument, entitlements become requests and obligations become favors. Again, as Sidgwick wrote, in the unregulated—or, better, self-regulating—marketplace of reasons:

No penalty follows the misplacement of the burden of proof . . . except the natural consequence that the assertion remains untested, and the audience therefore (if inquiring) unconvinced. To lay the burden of proof on another, therefore, is not to demand Proof at the point of the sword, but rather to request a favour. There is no ‘obligation’ on any one to prove an assertion,—other than any wish he may feel to set an inquiring mind at rest, or to avoid the imputation of empty boasting.

(p. 163)

So viewed, the source of the regulative authority of rational, argumentative norms is found in the psychology of individual audiences. As Sproule (1976) wrote: “The ultimate agency of assignment [with Whatelian presumptions] became, necessarily, the audience whose recognition was required for its successful application in dispute” (p. 122). And, according to Sproule, the ultimate ground on which such norms are cast is psychological: namely, the inclinations of individual audiences to defer to others by granting them authority in certain matters (p. 121). Whately (1846) (Whately (1846) 1963) himself characterized deference as “an habitual Presumption in favor of . . . the decisions or opinions [of some recognized authority]” (p. 118), writing that the grounds of deference tend not to be “the result of a judgment of the understanding” but instead depend on “often whimsical and unaccountable feelings” (p. 120). Yet, grounds (whether emotional or conceptual) whose nature is capricious and incorrigible hardly seem to provide suitable, let alone adequate, foundations for standards of argument that prescribe norms of justification in the pursuit of the true or the good, or even the prudent.

To the extent that this line of criticism is well placed, it poses a serious difficulty not merely for Whatelian accounts of presumption, but for any account of the normativity of reasons. To whatever extent argumentative norms depend upon particular institutional structures or authorities, the force of those norms will be limited by recognition those same structures or authorities garner. And, to whatever extent they are otherwise grounded only in capriciousness and incorrigibility, they are not deserving of the names “standards” or “norms” at all.

This, I suggest, is the problem space into which Kauffeld’s analysis of presumption is best situated in order to recognize its importance. Before turning to what I see as Kauffeld’s answer to these problems, I review two contemporary accounts of how Whatelian presumptions are binding on arguers.

5.2. Contemporary Explanations of the Binding Force of Presumptions

Section 3 noted that the methodological well-adaptedness of presumptions to argumentation as a rational activity is offered as a reason for their well-foundedness as argumentative norms. As to the binding force of presumptions, Walton et al. (2008) identify two possible accounts: burden of proof and relations of conveyance.

On the first, presumptive entitlement functions not to establish the acceptability of a claim, but to shift the probative obligation to provide reasons as to its (un)acceptability to an objector. Accordingly, establishing the presumptive acceptability of a claim shifts a local burden of proof, and this burden is taken to provide the source of binding. Walton et al. (2008) write:

it would seem that a cogent presumptive argument that meets all three criteria [of cogency, namely, premise acceptability and relevance, and inferential sufficiency]
in some form or other (especially depending on what is meant by the term ‘sufficient’) should put some pressure on the respondent to either accept the conclusion or give some good reason why he is not prepared to accept it. (p. 35)

The second account relies on the notion of a relation of conveyance (Katzav and Reed 2004), understood as “any relation in virtue of which, in the appropriate circumstances, one fact necessitates or makes it liable that another will obtain” (p. 244). Relations of conveyance are expressed in arguments as warrants (p. 253ff.), and thus the warrantedness of a conclusion is a function of the relation of conveyance at work in the argument supporting it. Using this notion, Walton et al. (2008) contend that cogent presumptive argumentation “imposes a relation of conveyance on the respondent,” namely “by putting pressure on the respondent to acknowledge the argument and respond in an appropriate way” (pp. 36, 37). Upon being given a cogent reason for the presumptive acceptability of a claim, an opponent must “deal with that” by either presumptively accepting the claim or presenting reasons to doubt it, “otherwise he is somehow being illogical or unreasonable, or failing to follow procedural requirements for engaging in rational argumentation” (p. 36).

These two accounts of presumptive binding are similar in that each relies on the quality of the warranting relation, and thus on features internal to presumptive inference itself, as the source of presumption’s binding force. As such, the effectiveness of presumptions as binding upon an arguer depends on the arguer’s prior commitment to the normative legitimacy of presumptive warrants as well-founded norms for transacting reasons that they are willing to hold themselves and each other accountable to. Yet, as the criticism of Whatley’s own account intimated, there are argumentative circumstances in which this prior commitment cannot be generally presupposed.

5.3. Sources of Binding and Well-Foundedness for Presumptions on Kauffeld’s Analysis

The interpretive hypothesis ventured here is that Kauffeld’s analysis of presumptions is fruitfully understood as being addressed to the problem of how norms of argumentative discourse are binding upon arguers.

Specifically, I read Kauffeld’s work as being attuned to the problem of the force of argumentative norms, and as dubious about the adequacy of accounts of normative binding that presuppose an arguer’s commitment to things like: norms of institutions or authorities from which particularly arguers might feel alienated, or might not identify themselves with; putative standards of “Reasoning” or “Truth” which do not accord with a reasoner’s own views of what is true or reasonable; and finally, the internal standards or collective ends of the argumentative discourse itself, particularly when their particular communicative exchange is characterized as some roughly-hewn activity type in which they are putatively engaged (on this second point, see especially Kauffeld 2001). In cases where arguers can be counted on to hold themselves accountable to argument-internal norms, or where there are enforcement mechanisms to which arguers are answerable, there is perhaps little problem in arguers holding each other to account on argument-internal normative books. Yet, in public spheres—in the open bazaars of opinions and the unregulated, free-markets of reasons—the jurisdiction of argumentation can be markedly limited. Citing Sidgwick (1884), Kauffeld (2013) argued that any account of the binding force of argumentative norms tied to particular, or worse idealized, institutional contexts that structure or partly constitute the activity of arguing “raises serious and long recognized difficulty for the analysis of natural presumptions operating outside of the context of institutionally established regulation” (Kauffeld 2013, p. 4; cf. 2003, pp. 139–40). In many ordinary circumstances an arguer’s commitment to argument-internal norms may neither be presupposed nor relied upon—particularly if the (anticipated) result of argumentation is not to their liking. For example, Kauffeld (2001) found normative recourse to H. Paul Grice’s Principle of Cooperation, and its attendant pragmatic, conversational maxims, problematic at least in part because “some important kinds of talk exchange are patently non-cooperative” (Kauffeld 2001, p. 3; cf. 2007, 2009b). As such, non-cooperative participants would not feel bound by norms based on cooperative ends.
In place of either institutional-specific or argument-internal norms like these, I read Kauffeld as seeking out domains of normativity to which arguers are already committed prior to their argumentative undertakings, with the aim of harnessing those extra-argumentative norms into service as sources of well-founded argumentative normativity. Situationally, if arguers cannot count on their interlocutors to abide by specifically argumentative norms, then, in achieving their argumentative ends, arguers must leverage whatever kind of normativity is available and enforceable. I read Kauffeld’s analysis of our ordinary practices of presuming as enlisting two related domains of normativity for this purpose: first, the ordinary extra-argumentative obligations agents have to do specific things or behave in certain ways, and second, the obligations undertaken when speakers make speech acts of certain kinds. The manifestness of those obligations, together with the risk of resentment or reprobation that an agent would face were they to fail to meet those obligations, underwrites the well-foundedness of presumptions, and presumptive inferences, drawn on these grounds.

In this way, Kauffeld’s analysis reverses the ordinary, Whatelian, order of explanation between well-foundedness and effectiveness. On Whatelian conceptions, the recognition of a presumption’s well-foundedness underwrites and explains its effectiveness—particularly its binding force on discussants. That is, the bindingness of a presumption is based on the presumer’s recognition of the well-foundedness (whether its validity, methodological well-adaptedness, or both) of the presumption—specifically their endorsement of the presumptive warrant underwriting the presumption. (A related explanation would cite the presumer’s deference to the institutional authority upholding the presumption.) By contrast, on Kauffeld’s analysis, the well-foundedness of a presumption is grounded in, and explained in terms of, its effectiveness—specifically its binding upon discussants in some extra-argumentative domain of normativity, e.g., an extra-argumentative, though perhaps not extra-discursive, obligation, and the agent’s manifest commitment to fulfil that obligation as exhibited by their unwillingness to risk resentment or reprobation should they fail to live up to the expectation to meet that obligation. In this way, a presumption’s validity (i.e., its predictive accuracy) is underwritten by normative mechanisms located in the motivational reasoning of agents themselves. Let us explore this mechanism in more detail.

On Kauffeld’s (2003) analysis, our entitlement to presumptions is grounded in another agent’s obligation to do something (or make it the case), together with our supposition that they would rather fulfil that obligation than risk any resentment they might incur for failing to do so (p. 143). Kauffeld distinguishes two kinds of such presumptions: “(i) standing presumptions, which are generally available on the supposition that prudent associates will avoid occasioning foreseeable resentment, and (ii) special presumptions, which an agent deliberately generates by providing others with grounds to presume things favorable to that agent’s ends and projects” (Kauffeld 2003, pp. 142–143; cf. 1995, p. 512; 2019, 261 ff).

“Standing presumptions,” Kauffeld (2003) elaborated, “are based on shared beliefs about what constitutes right and proper conduct and on the supposition that our associates are mature and prudent persons” (p. 143). As such, the normativity at work in standing presumptions needn’t be of a particularly argumentative nature. That is, it need not be based in specifically argumentative ends or distinctively argumentative values such as true belief, reasonable or justified commitment, or rational reconciliation; nor need it be especially well-adapted, methodologically, to activities of transacting reasons per se. Rather it can take the form of moral norms, social norms, norms of propriety, or prudence, or even norms of etiquette, or politeness. As such, these need not be intrinsically well-founded argumentative norms.

Nevertheless, given that adherence to such norms is shared, and collectively known to be shared, the norms themselves are readily accessible by arguers. Typically, the norm at work will be manifest, or arguers may make it so by calling attention to it. That an arguer is manifestly committed to the norm also accounts for its binding force upon them. An arguer’s standing and manifest commitment to such a norm may be taken to ensure
their accountability to it—permitting others not only to hold them to account, but also allowing them to rely on the arguer to hold themselves answerable to it. At this point, suppositions about the “moral motivations” of the obliged arguer are factored in, such that “presumption . . . is an inference which depends on attributing to a person a practical calculation regarding the resentment that person might hazard [by not fulfilling their obligation]” (Kauffeld 1995, p. 512). On this picture, the reliability, or well-foundedness, of a presumptive warrant derives causally from its binding force upon the obligated arguer. As such, the strength, warrantedness, and validity of a presumption, is a direct function of its manifest binding force upon arguers.

Moreover, the binding force of a standing presumption can often be readily manipulated in ways that are both strategic and conspicuous, thereby effectively recalibrating the moral calculations obliged arguers make in deciding what efforts to make in meeting their obligations. For example, by demanding or offering a deposit on a borrowed item, the probative strength of the presumption that the borrower will return the item can be increased, since the cost to them of failing to return it has been increased in a way that is abundantly apparent to all concerned (Kauffeld 1995, p. 512; 2003, p. 143; 2009a, p. 8). Since the well-foundedness of a presumption, on Kauffeld’s analysis, is a function of its binding force over obliged arguers, altering the consequences of the (non-)performance of some obligation through a manifest structure of incentives and deterrents, rewards and punishments, also manipulates the probabilistic strength of the presumption (i.e., the extent of risk involved in making the presumption, the warrantedness of the presumption as well-founded). Thus Kauffeld (2009a) wrote, “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” (p. 8).

Special presumptions function similarly in all these respects. Their difference with standing presumptions can be found in their origin or design. Just as the force of an existing presumption can be strategically manipulated by the acts of arguers, new presumptions can be created in this way. For example, in making a promise, and thereby openly undertaking an obligation to do what is promised, a speaker can create the special presumption that they will do as they have promised. Having been created, the force of the presumption, and thus its probative strength, can be manipulated by overtly changing the stakes attached to non-fulfillment of the promise. “Special presumptions,” Kauffeld (2009a) wrote, “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” (p. 9).

The Kauffeldian presumptions discussed so far arise from a domain of normativity inherent in the ordinary obligations, and their concomitant entitlements, transacted in the day-to-day interactions of social life. Yet, Kauffeld located a related domain of normativity within the very fabric of meaningful communicative activity. Drawing upon Gricean accounts of utterance meaning, Kauffeld (2001) identified a species of commitment incurred by speakers when making meaningful speech acts. Consider that, on a Gricean account, the meaning of an utterance consists in a complex of communicative intentions speakers make manifest in using language. For example, saying that \( p \) involves the speaker’s intention that an audience recognize that, in saying that \( p \), the speaker thereby intends to provide the audience with a reason for believing that \( p \) (p. 7). Since Kauffeld took this intention to be manifest in the speech act of itself, he held the speaker, in making the speech act, to incur an obligation to make it worth the while of their audience to take that reason seriously, or else incur the resentment of their audience. Thus, the communicative intentions that, on Gricean accounts, comprise speaker meaning provide the necessary ingredients for warranted presumptive inferences on Kauffeld’s analysis. Accordingly, audiences may, for example, rightly presume that \( p \) on the grounds of a speaker’s say-so. The manifest social expectations binding upon assertors and attestors may rightly be relied upon in judging the validity (here understood as accuracy or truth) or what is asserted or attested to.
Two points here deserve notice. First, since argumentation, as an interpersonal activity, is a communicative activity, an arguer’s deliberate engagement in the activity of argumentation presupposes their commitment to the any obligations and entitlements involved in making speech-acts. So, if communication, or communicative meaning, itself has a normative dimension, arguers may properly be supposed to be committed to it in virtue of their making communicative, rather than specifically argumentative, acts. And, if these communicative norms (or norms of communicative meaning) can be harnessed as well-founded argumentative norms, then the effectiveness of at least some argumentative norms as binding upon arguers is guaranteed by the very structure of the meaningful communication that necessarily comprises any argumentative exchange. If correct, this account can provide a basis for at least some standing presumptions in any argumentative exchange.

Second, just as the ordinary obligations transacted in daily life can be leveraged into special presumptions, so can communicative obligations. For example, if a speaker, in saying that $p$, wanted to strengthen the grounds for presuming offered to their audience, they might overtly undertake additional obligations with respect to $p$’s acceptability by, for example, formally attesting that $p$ by avowing their sincerity, and pledging to give reasons in support of $p$ or answer doubts and objections if called upon to do so (Kauffeld and Fields 2003, 2005). On Kauffeld’s analysis, by manifestly upping the stakes of resentment should they fail to meet their obligation to get it right that $p$, speakers thereby increase the warrantedness (i.e., the well-foundedness) of their audience’s presumption that $p$ made on this basis.

In summary, I read Kauffeld’s analysis of the normativity of presumptions as initially oriented to the problem of normative binding. Kauffeld’s answer to this problem, I suggest, has several key components. First, it harnesses a domain of typically extra-argumentative normativity to which arguers are already committed independently of their argumentative undertakings or any commitment to argument-internal norms. In prototypical cases, the warrantedness of a presumption, on Kauffeld’s analysis, is backed by extra-argumentative obligations and entitlements of two sorts: (i) those transacted in the routine commerce of day-to-day exchange, or (ii) those embedded in the very fabric of communication, and communicative meaning, itself. The bindingness of those obligations on arguers is exhibited by the extent to which they are unwilling to face the resentment or reprobation of their interlocutors should they be found to fail to live up to those obligations. Thus, not only are these domains of normativity ones that may be taken to be binding upon arguers, in virtue of arguers’ manifest, if unarticulated, commitment to them, but they are readily accessible to arguers who can both enforce and manipulate the force of these norms when demanding compliance either of themselves or others. Lastly, it is held that, at least sometimes, because of the normative motivational structures just mentioned, presumptions are causally related to the obtaining of presumed states of affairs, through the intentional actions of obliged arguers seeking to avoid risks of resentment. By this mechanism, Kauffeldian presumptions can underwrite warranted, well-founded presumptive inferences.

6. Conclusions

Argumentative guidance norms provide rules for arguers in regulating their inferential undertakings. Similar to appraisal norms, if they are to be well-founded, guidance norms must be objectively reliable (i.e., valid) and methodologically adapted to the procedural constraints and conditions under which argumentation, by its very nature, takes place. Additionally, effective guidance norms must also be accessible to, and binding upon, arguers.

Within argumentation theory, presumptions have been offered as providing a viable answer to (at least some of) these normative problems. Whatelaian presumptions, here presented as operationalizing a distinct quality of warrant for the acceptability of claims, seem to be primarily directed at the problem of normative well-foundedness. Their well-foundedness is held to derive from their methodological well-adaptedness to
constitutive features of reasoning and argumentation as activities, thereby providing presumptions a warrant whose basis is, at least partly, pragmatic. Indeed, this methodological well-adaptedness is offered as overcoming any shortcomings of validity from which the presumption might suffer. After all, were its evidential bona-fides not suspect, there would be no need to presume it at all. This methodological well-adaptedness is then taken to support the fitness of presumptive warrant as an appraisal norm which, since it is typically accessible to arguers themselves, can also serve as a guidance norm. Thus, the effectiveness of Whatelian presumptions—particularly their binding force over presumers and presumptive reasoners—derives from, and is explained by, an agent’s recognition of the well-foundedness, or warrantedness, of the presumption. Yet Whatelian accounts of presumption prioritize the well-foundedness of argumentative norms over their binding force upon arguers, by presupposing that arguers have a prior commitment to the intrinsically argumentative norms that provide the basis for presumptive warrant, such that arguers can be supposed to hold themselves and each other accountable to them.

By contrast, I read Kauffeld’s analysis of presumption (our ordinary practices of presuming and presumptive inference) as relying upon a special kind of backing (or grounding) on which presumed claims can be based, which does not presuppose a prior commitment of argumentative actors to argumentation-specific norms. That is, it does not take the effectiveness of Whatelian presumptive warrants for granted. Instead, it first seeks to answer the problem of how norms of argumentative discourse are binding upon arguers, by seeking to identify distinctive kinds of commitments to which arguers are manifestly committed prior to, and independently of, their specifically argumentative acts. When strategically deployed in argumentative contexts, these extra-argumentative commitments can be harnessed and further manipulated by arguers to provide a normative basis for well-founded, warranted presumptive inferences.

Thus, on my reading, an innovative and hitherto understudied element of Kauffeld’s analysis of presumption is that it reverses the received, Whatelian, order of explanation between a norm’s well-foundedness and its effectiveness. The effectiveness of a Whatelian presumption derives from a presumer’s recognition of its well-foundedness. When a discussant fails or refuses to recognize the well-foundedness of a presumptive warrant, they will decline to grant the presumption. This can readily happen whenever the value, end, or principle appealed to by the presumptive warrant (or the authority issuing the presumptive rule) is not endorsed by a discussant. Moreover, when the substantive outcome favored by the presumption is not one favored by a discussant, they will be disinclined to endorse the presumptive warrant on precisely these grounds (cf. Kauffeld and Freeman 2019, p. 188). That is, they will find reason to judge the presumption to be ill-founded precisely because it yields an outcome they do not countenance (i.e., it yields a commitment they decline). Importantly, in such cases, the presumption itself will misfire: it will not achieve its intended rhetorical force or normative effect. It will not be effective, since the discussant who does not recognize the well-foundedness of the presumptive warrant will not take themselves to be bound by the presumption. Consequently, any shift in probative burdens attending to the misfiring presumption will also fail to be binding.

By beginning form a domain of normativity to which arguers are already committed, prior to, and independently of, their specifically argumentative undertakings, Kauffeld’s analysis of presumptions overcomes the problems of effectiveness that encumber Whatelian presumptions. The challenge, on Kauffeld’s approach, is to show how these binding yet extra-argumentative norms, and the mechanisms by which they are transacted (e.g., undertaken, made manifest, recognized, manipulated, enforced, discharged, etc.) can operate so as to yield grounds for manifestly well-founded, valid, argumentative norms (norms of reasoning, inference, and argument). Kauffeld’s analysis of presumption does exactly this. By openly undertaking obligations, arguers make it incumbent on themselves to satisfy those obligations. They thereby take on the responsibility of making it the case that certain states of affairs, relating to the obligation, obtain. Moreover, having undertaken the obligation they not only supply for themselves a self-motivating reason
to, but they provide a mechanism of accountability to others whom they intend to rely on them. The validity presumptions, and the cogency of presumptive inferences, may thus be grounded in these normative structures of obligation, motivation, and accountability. Thus, Kauffeld successfully identified a hitherto unrecognized normative mechanism capable of grounding the well-foundedness of presumptions on their effectiveness. In so doing, Kauffeld reversed the order of normative explanation found in predominant, Whatelian accounts of presumption and presumptive inference.

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**Notes**

1. Cf. Goldman’s (1980) distinction between regulative justificatory principles, which are “designed specifically to guide a cognizer in regulating or choosing his doxastic attitudes. Here the criteria of justification must be ones to which a cognizer can appeal in the process of making doxastic decisions,” and evaluative justificatory principles which “specify the features of beliefs (or other doxastic attitudes) that confer epistemic status [irrespective of whether these features are available to actors or judges]” (p. 28).

2. Walton (2008) presents the conditions in the context of presumption in argument, stating them as follows:
   
   [i] The argument is not sufficiently strong, based only on the evidence supporting the . . . premises to shift a burden of production to the respondent’s side. [ii] The presumptive rule has a practical justification in line with the goal of the persuasion dialog. [iii] The argument is sufficiently strong, with the practical justification counted in, to shift a burden of production to the respondent’s side. (p. 235)
   
   The remaining conditions are not relevant to the point being made here.

   See Bodlović (2017), for a critical survey of the development of Walton’s account of presumption.

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