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# Presumptions, burdens of proof, and explanations

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**Abstract:** On the standard view, there are different types of presumptions but, nevertheless, they all asymmetrically allocate the burden of proof. In this talk, I distinguish two meanings of the “burden of proof” and argue that two types of presumptions, practical and cognitive ones, allocate the burden of proof in different senses. Consequently, the standard accounts of presumptions are either more fragmented than scholars usually admit, or they have lower explanatory potential.

**Keywords:** burden of arguing, burden of explanation, burden of proof, burden of reasoning, cognitive presumption, deontic function, practical presumption.

## 1. Introduction

The notion of the burden of proof plays an important role in both ordinary and academic parlance. Broadly understood, it denotes the dialogical obligation of a party (e.g., proponent) to support her position once it gets challenged, rejected, or contradicted by the opponent. In law, philosophy and argumentation theory, the burden of proof raises many questions, but one question stands out in terms of popularity and practical relevance: Which party, in the discussion, carries, or should carry the burden of proof? How should we, in light of that, structure a reasonable discussion? For instance, if both parties have standpoints, should they both carry the (equal) burden of proof, or should one party, in some sense, be dialectically privileged? I shall call this the *allocation question*. In this paper, I deal with the allocation question in those situations where it is a *presumption* that is challenged, rejected or contradicted.

In the general case, where it is not a presumption that gets challenged, it might seem that there is a simple answer: in the so-called mixed discussion, where both parties have standpoints, we should accept a *symmetrical allocation* of the burden of proof (van Eemeren and Houtlosser 2002; Walton 2014). In argumentation theory, pragma-dialecticians have advocated this view, and their position coheres well with “dialectical egalitarianism.” According to this philosophical tradition, once parties decide to have a reasonable discussion, then every proposition, if challenged, must be supported by an argument (see Rescorla 2009a). As a result, there are neither privileged parties nor privileged standpoints: “In a mixed dispute, where two parties have advanced contradictory standpoints, each party has a burden of proof for his own standpoint” (van Eemeren and Houtlosser 2002, p. 18).

Despite their intuitiveness and elegance,<sup>1</sup> the symmetrical allocation and dialectical egalitarianism are, to some extent, controversial. Many philosophers and argumentation scholars have argued that sometimes we should accept an *asymmetrical allocation* of the burden of proof since some propositions are dialectically privileged. Once these propositions

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<sup>1</sup> One aspect of “elegance” is that the allocation question seems to get resolved almost on conceptual grounds. That is, if we must attribute the burden of proof to every party whose position gets challenged (rejected, contradicted) in the dialogue, then allocating the burden of proof comes down to nothing more than *rephrasing* the definition of the burden of proof: the answer to a question of who carries the burden of proof seems already contained in the meaning of the burden of proof.

get challenged, they do not require support until or unless the opponent presents (sufficient) reasons against their acceptability. According to the standard account, privileged propositions which shift, reverse, or asymmetrically allocate the burden of proof, and that are also defeasible in nature, are called *presumptions* (see Whately 1963; Rescher 1977, 2006; Ullmann-Margalit 1983; Freeman 2005; Walton 2014; Godden 2017). So, if both parties have standpoints and their standpoints get challenged, then both parties carry the burden of proof *unless* one standpoint is a presumption.

The standard accounts of presumption are surprisingly heterogeneous (see Godden and Walton 2007; Lewiński 2017) and there are at least two sources of heterogeneity. First, there are fundamental disagreements among scholars on how to characterize presumptions,<sup>2</sup> and, second, there are fundamental differences between different types of presumptions. For instance, we might distinguish cognitive (epistemic) and practical presumptions since they operate in different dialogical contexts (epistemic inquiry vs. practical deliberation), perform distinct normative functions (promoting epistemic vs. non-epistemic goals) and, thereby, have qualitatively different foundations (see Ullmann-Margalit 1983, p. 143; Rescher 2006, p. 27; Godden and Walton 2007, p. 337; Lewiński 2017, p. 610).<sup>3</sup>

*Cognitive presumptions* are typically used in the context of epistemic inquiry. In a reasonable epistemic discussion about the shape of Earth, “The Earth is round” is a (strong) cognitive presumption since this proposition “represents our most plausible *candidate* for truth” (Rescher 2006, p. 71). The dialogical parties should recognize that, due to the overwhelming and well-known (scientific) evidence that the Earth is round, “The Earth is round” should be exempted from the standard burden of proof, i.e., that the burden of proof should rest only with its opponent. The concept of a cognitive presumption coheres well with “dialectical foundationalism,” a philosophical tradition which suggests that the rules of reasonable discussion should protect (epistemically) uncontroversial propositions and sanction (epistemically) deviant challenges (see Rescorla 2009a). By contrast, *practical presumptions* are typically used in the context of practical deliberation. In criminal law, for instance, “John is innocent” is a (strong) practical presumption: since we should “try to minimize the conviction of innocent persons, even at the cost of letting guilty persons go free” (Walton 1988, p. 244) the (global) burden of proof rests only with the prosecutor, and “John is innocent” stands good until or unless the prosecutor proves otherwise. Although inspired by legal scholarship, the concept of a practical presumption is readily applicable to many contexts of everyday deliberation where, in the circumstances of uncertainty and pressure to make a timely decision we wish to avoid more significant harm (see Ullmann-Margalit 1983; Godden 2017).

Cognitive and practical presumptions are different in many respects,<sup>4</sup> but one feature seems to hold them together. According to the standard accounts, regardless of whether *p* is a

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<sup>2</sup> For instance, scholars disagree whether presumptions are rules (Prakken and Sartor 2006) or propositions (Walton 2014); statuses, modifiers, qualifiers of propositions (Godden 2017, 2019) or relations (Pinto, according to Freeman 2005, p. 27); based on inferential (Godden and Walton 2007) or discursive support (Freeman 2005; Rescher 2006); and whether they belong to the opening (van Eemeren and Houtlosser 2002) or the argumentation stage of the critical discussion (Walton 2014).

<sup>3</sup> Importantly, the proposed distinction is also a matter of controversy. Some scholars believe that we should, indeed, distinguish practical from cognitive presumptions (e.g., Rescher 2006, Freeman 2005), and others remain open to this possibility (see Ullmann-Margalit 1983, p. 143; Godden and Walton 2007, p. 337). However, Godden (2019) has recently argued against the theoretical relevance of cognitive (epistemic) presumptions and insisted that “presumably” is exclusively a practical (non-epistemic) modality. Although he presents plausible concerns about the notion of cognitive presumption, this paper sets these concerns aside. It starts from the assumption that cognitive presumptions represent a legitimate class of presumptions.

<sup>4</sup> Not only do cognitive and practical presumptions have different *ultimate contextual functions* (i.e., acquiring truths vs. making right decisions) and different *normative functions* (promoting epistemic vs. non-epistemic values), but they also have distinct *dialogical functions* (i.e., practical presumptions do not stop dialectical

cognitive or a practical presumption, if  $p$  gets rejected, then the burden of proof rests exclusively with the opponent. Hence, all presumptions share the same *deontic function*: they asymmetrically allocate the burden of proof. The idea of asymmetrical allocation is a cornerstone of the standard account of presumptions for two reasons: first, all types of presumptions, supposedly, share this function (despite other differences), and, second, all traditional scholars seem to agree on this idea (despite other disagreements).

In this paper, I will explore the deontic function of presumptions in some detail and (provisionally) answer the allocation question in so-far as presumptions are concerned. The main question is the following: What, exactly, does the deontic function of presumption amount to? Once presumptions are rejected, do they place the burden of proof on the opponents? If they do, what, exactly, does the burden of proof amount to; and, if they do not, what other obligations might be relevant? Do presumptions place the *burden of arguing*, the *burden of explanation*, or the more general *burden of reasoning* on their opponents? Minimally, the paper shows that the standard account of the deontic function is ambiguous. If presumptions allocate the “burden of proof” on the opponent, then they allocate it in two distinct senses: cognitive presumptions allocate a general burden of reasoning, and practical presumptions allocate a more specific burden of arguing on the opponent (at least in optimal scenarios). Nevertheless, the standard account is not only ambiguous but also implausible: since “burden of proof” is best understood as a burden of arguing (rather than a more general burden of reasoning) cognitive presumptions, strictly taken, do not asymmetrically allocate the burden of proof. As a result, the standard accounts require clarifications, qualifications, and, most generally, revisions.

Of course, some scholars have already claimed that the standard accounts of presumption, as well as dialectical foundationalism, are not plausible. For instance, Kauffeld (1998, 2003, 2005) and Bermejo-Luque (2019) argued that, in the context of everyday dialogue, presumptions are not always negatively correlated to the burden of proof, and dialectical egalitarians insist that a reasonable discussion should never be “dogmatic” (see Rescorla 2009a, p. 96). This paper adds to this trend by distinguishing between (1) various types of presumptions and (2) distinct meanings of “burden of proof,” and answers the more refined allocation questions generated by the increase in typological and conceptual detail. For the most part, the paper hopes to enhance the study of presumptions by adding to the analytic sophistication.

I first outline common principles of asymmetrical allocation (Sect. 2), and then focus on the cognitive and practical presumptions (Sect. 3). In Sect. 4, I deal with the different meanings of the burden of proof (the burden of reasoning, and the burden of arguing) and their relationships to the burden of explanation. After explaining these notions, I connect them to cognitive and practical presumptions (Sect. 4.1—4.4). In conclusion, I provide a summary of the most important results.

## 2. Common principles of asymmetrical allocation

The view that, sometimes, only one dialogical party is obliged to provide reasons (of a particular kind and quality), although both parties have standpoints, is present in both ordinary and academic contexts. For instance, after complaining about potential voter fraud, Donald Trump tried to discredit the disagreeing journalist for failing to show that the fraud did *not*

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regress); *pragmatic* functions (i.e., two types of presumptions do not avoid greater harm in the similar sense); and, at least sometimes, they seem susceptible to different types of *defeaters*. For details, see Bodlović (forthcoming 2020).

happen instead of providing arguments for his own claim once the journalist challenged it. Thus, it seems that Trump implicitly appealed to the asymmetrical allocation of the burden of proof (for details, see CNBC.com staff 2016).

In academic contexts, the asymmetrical allocation is advocated more explicitly. For instance, it is “a piece of scientific orthodoxy” (Dare and Kingsbury 2008, p. 511) that the burden of proof should exclusively rest with those who propose new scientific hypotheses, theories, or paradigms. Philosophers have proposed asymmetrical allocation, as well. Lycan (2003) argues that, in a metaphysical discussion concerning the relationship between free will and determinism, only the proponents of incompatibilism should carry the burden of proof. Whereas the famous “wager argument” suggests that the burden of proof should rest with the atheist (Pascal 2004), Scriven (1966), and Flew (1972) claim that, in the discussion about the existence of God, only the theist should carry the burden of proof. In epistemology, an asymmetrical allocation is relevant for regulating the debate between a sceptic and a dogmatist (Kelly 2005), and for resolving a problem of infinite (dialectical) regress (see Rescher 1977; Rescorla 2009b). Also, it is present in the bioethical debates about discrimination (Räikkä 1997), organ markets, human enhancement, climate change, and the precautionary principle (Koplin and Selgelid 2015). Finally, in metaphilosophy, Williamson (2011) argues that the burden of proof should rest with those who *deny* that philosophical expertise contributes to the successful performance of thought experiments. Therefore, the asymmetrical allocation has been advocated by a number of scholars, across many philosophical disciplines and within different intellectual traditions.

Sometimes, the attempt to asymmetrically allocate the burden of proof is a mere rhetorical trick used to gain an unfair dialogical advantage (as in the Trump example). Still, asymmetrical allocations can also have procedural, prudential, epistemic, or even moral foundations. Different types of normative foundations generate different principles. In my view, the common normative principles of asymmetrical allocation, i.e., principles which are not motivated (only) by rhetorical self-interest, can be divided into two broad categories: *proposition-related principles* and *agent-related principles*. In what follows, I briefly explain several principles, as well as the proposed categorization.

Let us focus on the popular slogan “she who asserts must prove.” Although this “overarching principle of burden of proof” (Walton 2014, p. 99) appears straightforward, I believe that it is ambiguous for (at least) two reasons. First, it is unclear whether “she who asserts must prove” is the principle of symmetrical or asymmetrical allocation. On the one hand, if we understand the principle literally and apply it to a mixed discussion, then the principle allocates the burden of proof symmetrically: both parties are obliged to provide reasons because both parties *assert* standpoints. On the other hand, it seems that “she who asserts must prove” is, at least sometimes, understood as the principle of asymmetrical allocation. The literature allows several (incompatible) explanations of why this might be the case, which, in turn, render the overarching principle even more ambiguous. As a result, not only is it unclear whether the overarching principle symmetrically or asymmetrically allocates the burden of proof but also it is unclear on what grounds, exactly, is this principle supposed to allocate the burden of proof asymmetrically.

There are (at least) three interpretations of “she who asserts must prove” that would allow the overarching principle to allocate the burden of proof asymmetrically in a mixed discussion. First, the act of making an assertion is sometimes understood as the act of initiating an argument or “bringing the action.” Under this interpretation, the overarching principle would mean that (1) the burden of proof rests (only) with the dialogical party who presents *the view first*, rather than with anyone who performs the speech act of an assertion.<sup>5</sup> Second, the

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<sup>5</sup> This is connected to the legal principle: *Semper necessitas probandi incumbit ei qui agit*.

act of making an assertion is sometimes understood as the act of rejecting the status quo, i.e., of challenging widely accepted beliefs or values. Under this interpretation, the overarching principle would mean that (2) the burden of proof rests (only) with the party who asserts *something* (*dialectically, epistemically, instrumentally*) *controversial* (see Rääkkä 1997, pp. 466-467).<sup>6</sup> Third, it seems that “asserting” is sometimes understood as “affirming.” Under this interpretation, the overarching principle would mean that (3) the burden of proof rests (only) with the party who asserts *a positive claim* (Cargile 1997, p. 61).<sup>7</sup> For the most part, the previous interpretations are all concerned with the question: How should we allocate the burden of proof given what we know about the normatively relevant properties of the standpoints or claims (i.e., is the claim presented first, is it controversial, and is it an affirmation or a negation)? As a result, three interpretations of the overarching principle represent *proposition-based principles* of asymmetrical allocation.

The second group of principles is concerned with a different question, namely: How should we allocate the burden of proof (in order to facilitate the optimal resolution of the dispute) given what we know about the dialectically relevant abilities or inclinations of dialogical parties? Consider the case where David says to Luke: “Well, I paid the last round of drinks; so, it is your turn!” Since it is Luke who paid the last round, he disagrees with David, and the discussion begins. But suppose that Luke has a receipt in his pocket. In this case, although David initiates the conversation and advances a controversial claim,<sup>8</sup> the resolution procedure will be more effective if Luke incurs the burden of proof. Luke has access to decisive evidence, and should he be obliged to present it, the issue would be quickly resolved. The principle, therefore, is the following: (4) the burden of proof rests (only) with *the party who has better epistemic access to evidence*.<sup>9</sup>

Finally, suppose that David wants to buy a car from Luke. In this case, it is crucial to determine whether the vehicle is in good condition, and Luke, as a longtime owner, surely has better access to evidence. However, since Luke’s motivation to speak truthfully might be compromised, it is useful to attribute the burden of proof to David, who has a genuine interest in discovering the truth. If the primary goal is to acquire true belief about the car’s condition, then asymmetrical allocation might, once again, facilitate the optimal resolution of the issue (see Dare and Kingsbury 2008).<sup>10</sup> Hence, the underlying principle is the following: (5) the

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<sup>6</sup> Since somebody can initiate a discussion without asserting a highly controversial claim, these principles do not go hand in hand.

<sup>7</sup> The principle “Affirmati non neganti incumbit probatio” is based on the idea that it is not dialectically reasonable to allocate the burden of proof on the proponent of the negative claim because it is rather demanding to prove the absence of property, fact or incident. The usual explanation, however, is even stronger because it suggests that it is *impossible* to prove a negative claim: “You cannot prove a negative.” This slogan is typically applied in the discussions about the existence of paranormal or supernatural entities (such as God) and is “combined with the thought that people should not be assigned obligations to do impossible things” (Cargile 1997, p. 61). Nevertheless, scholars have argued that, in the usual circumstances, it is possible to prove a negative claim (see, e.g., Cargile 1997; Macagno & Walton 2011; Pigliucci and Boudry 2014) and that even if proving a negative claim is somewhat more demanding, it should affect the allocation of the burden of proof. For instance, according to the “priority principle,” it should change the order of defense: both parties should carry the burden of proof, but the proponent of the positive claim should go first (see van Eemeren and Houtlosser 2002).

<sup>8</sup> Suppose, for instance, that all *other* friends saw who paid the drinks.

<sup>9</sup> In civil law, this is known as the “principle of fairness” (van Eemeren et al. 2002, p. 115) and it is usually applied in the cases of product liability (Hahn and Oaksford 2007, p. 41).

<sup>10</sup> This is linked to the legal principle *caveat emptor* (Dare and Kingsbury 2008). The proposed list is not exhaustive. For instance, Hansen (2019) mentions two additional principles: the burden of proof “belongs to the party who would lose the case if the outcome had to be decided at this point,” and “it belongs where the law says it belongs” (pp. 15-16). In addition, we can refine the studies of asymmetrical allocation by taking into account the pragmatic dimensions of propositions. In other words, we should not focus only on *the party* who introduces the proposition (e.g., is it the party who ‘brings the action,’ or with ‘pure motivation’?) and the *nature of proposition* (e.g., is it a negative one, or controversial one?), but also on the (intended) *pragmatic goal* that

burden of proof rests (only) with the party *who is less biased, or who does not have corrupted motivation*. Notice that the last two principles are not concerned with the properties of propositions but rather with distinctive abilities or inclinations of dialogical parties. (i.e., the ability to provide sufficient proof, and the inclination towards truth). As a result, they represent *agent-based principles* of asymmetrical allocation.

In the following sections, I will mostly focus on the second proposition-based principle mentioned above. According to this principle, some propositions do not require support because, in some contexts and circumstances, they seem epistemically plausible or instrumentally desirable. Typically, these propositions are called cognitive and practical presumptions. Although one may propose that all aforementioned principles “explicitly or implicitly determine, at least partly, what it is reasonable or justified to presume” (Räikkä 1997 p. 463), the analysis in this paper will start from a narrower concept of presumption.

### 3 Cognitive and practical presumptions

Suppose that Diane and Steve are discussing the shape of the Earth. Diane admits that scientific claims are defeasible, but believes that science offers the best available answers about the natural world. In this specific epistemic dialogue, Diane claims that the Earth is round (or spherical), and readily accepts this belief as her standpoint. By contrast, Steve is a member of the Flat Earth Society, who believes that the overwhelming scientific evidence is a fabrication. He thinks that the Earth is disc-shaped, and accepts this belief as his standpoint.

In the ordinary context, “The Earth is round” is a (strong) *cognitive presumption*. Since this empirical claim is, in principle, defeasible, it might be reasonable to discuss it and, in exceptional circumstances, even reject it.<sup>11</sup> In the normal cases, however, any reasonable person (with primary education) should acknowledge that, in Rescher’s words, “The Earth is round” is “our most plausible *candidate* for truth” (2006, p. 71). Many reliable epistemic sources vouch for it,<sup>12</sup> and this fact requires dialectical recognition: in epistemic dialogue, the proponent of a plausible standpoint and the proponent of an implausible standpoint should *not* play by the same rules. Granted, the dialectical rules should not require an immediate acceptance of the most plausible standpoint, but, also, they should not force us to proceed as if, initially, all propositions are equally plausible. Epistemic dialogues must avoid both uncritical dogmatism and naïve egalitarianism: on the one hand, its rules must allow the criticism of plausible standpoints (since this is a desirable epistemic attitude), but, on the other hand, give some dialectical credit to (highly) plausible standpoints (since, initially, they seem epistemically warranted).

If we must regulate epistemic dialogues by dialectical rules that systematically further epistemic ends, then the asymmetrical allocation of the burden of proof seems like a proper regulatory choice. In the Flat Earth example, the acceptance of “The Earth is round” appears to facilitate the acquisition of true or justified beliefs, so Diane should not carry the burden of proof. By contrast, initially, the acceptance of “The Earth is disc-shaped” appears to get in the

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underlies the proposition. Along these lines, Kauffeld suggests that the allocation of the burden of proof depends (1) on the type of speech act. Thus, *p* will entail the burden of proof if used as a proposal, but not if used as a suggestion (Kauffeld 1998). Pragma-dialecticians also recognize the importance of pragmatic properties. In their opinion, however, what determines the allocation is, strictly speaking, not the nature of the particular speech act, but (2) the argumentative function of this speech act in a critical discussion (Tseronis 2009, p. 83). Thus, some suggestion *p* will entail the burden of proof if it represents a (sub)standpoint, but not if it represents a starting point agreed upon at the opening stage.

<sup>11</sup> “The Earth is round” is defeasible in the sense that it not with mathematical certainty that the proposition is true, and it is conceptually possible that some day we obtain information that would show it to be false. So, it is not, *in principle*, irrational either to have a discussion about it or to reject it.

<sup>12</sup> For instance, scientific authority, evidence, testimonies, and explanatory utility.

way of achieving epistemic goals, and, for this reason, Steve should carry the burden of proof.<sup>13</sup> This means that Steve should show that circumstances are somehow exceptional, and present (persuasive) arguments that the Earth is disc-shaped.<sup>14</sup> If his arguments, ultimately, do not survive Diane's critical testing, "The Earth is round" gets accepted by default.<sup>15</sup> So, initially, an asymmetrical allocation favors the more plausible propositions and sanctions deviant challenges, but it still allows the criticism of credible claims and offers a normative infrastructure for having a debate about widely-accepted views that happen to be controverted by eccentric individuals.

To sum up, if  $p$  is the most plausible truth-candidate, then  $p$  is a dialogically privileged proposition and represents a cognitive presumption. So, the status of cognitive presumption is both an *epistemic* status, as well as a *dialogical* status of a proposition.

Next, suppose that Mark and Alice are discussing whether to attend their friend's house party. They are invited and would, generally, like to go, but their decision (mostly) depends on whether John will be at the party. John is a person who Mark and Alice intensely dislike, and they agree that his presence will necessarily ruin their evening.<sup>16</sup> Since the chance that John will be at the party is, roughly, a half, Mark and Alice are facing the so-called "deliberation problem" (Ullmann-Margalit 1983; Godden 2017): since the party is about to begin, they must make their decision quickly; but since John's whereabouts are uncertain, they cannot base their decision on a justified belief. Let us suppose that, in the described circumstances, Mark decides to proceed *as if* John will be at the party, and makes the following proposal: "We should skip the party." Alice, however, replies: "We should go to the party."

In the Party example, "John will be at the party" is a *practical presumption*. Scholars typically characterize practical presumptions as propositions that we proceed upon (or take *as if* they are true) when there is pressure to make a timely decision and the evidence is uncertain (Ullmann-Margalit 1983; Walton 2014; Godden 2017). In these special circumstances, the main goal is to make a decision that avoids more significant harm. Accordingly, "John will be at the party" is a practical presumption because (1) there is a pressure to decide whether to go on the party; (2) this decision depends on whether John will be at the party; (3) it is uncertain whether John will be at the party; but (4) parties agree that proceeding on "John will be at the party" and skipping it (when, in fact, John will *not* be there) seems like a "lesser evil" than proceeding on "John will *not* be at the party" and attending it (when, in fact, John *will* be

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<sup>13</sup> Not only is this view supposed to cohere with some pre-theoretical intuitions (see Rescorla 2009a), but it also seeks to resolve a well-known theoretical problem of an *infinite (dialectical) regress* (see Rescher 1977; Freeman 2005; Rescorla 2009b).

<sup>14</sup> It is crucial to notice that Steve is obliged to present (persuasive) arguments that the Earth is disc-shaped in order to win the discussion, but not in order to defeat the presumptive status of "The Earth is round." The presumptive status of Diane's standpoint gets defeated as soon as Diane incurs the standard burden of proof, i.e., becomes obliged to argue that the Earth is round. In principle, Steve can make this happen by successfully *undercutting* well-known scientific evidence and, thereby, showing that "The Earth is flat" and "The Earth is round" are equally plausible propositions. In this case, "The Earth is round" ceases to be the most plausible truth-candidate and, hence, loses its presumptive status, but Steve does not *win* the discussion by defeating a presumptive status in the described fashion. Instead, he only *resets* the debate: from that point on, Diane also incurs the burden of proof, and the dialogue continues in a new normative setting.

<sup>15</sup> This dialectical bias towards a scientific *status quo* is generally relevant for regulating a debate between scientists and pseudoscientists. According to Pigliucci and Boudry (2014), since pseudoscientific claims (concerning, e.g., Intelligent Design, extraterrestrial visits, anti-vaccination, or the denial of an anthropogenic climate change) have low prior probabilities, their proponents should carry the burden of proof.

<sup>16</sup> For the sake of example, imagine that Mark and Alice have very objective reasons to hate John, and that, due to these reasons, John is definitely the last person they would like to see, let alone to party with. For instance, just some months ago John has seriously injured their daughter in a car accident while driving drunk. After the incident, he denied any responsibility for his wrongdoing, and has never apologized.



there).<sup>17</sup> Since proceeding on “John will be at the party” seems more desirable in the described circumstances, and both Mark and Alice agree that it is more desirable, the distribution of dialectical obligations should not be (completely) symmetrical.

In a deliberation dialogue, the asymmetrical allocation of a burden of proof is a reasonable regulatory choice when we wish to promote the goal of avoiding greater harm. Since proceeding on “John will be at the party” promotes this goal in the Party case, Mark should not carry the burden of proof: in the circumstances of pressure and uncertainty, his position should have a status of a dialogically privileged presumption. By contrast, proceeding on “John will *not* be at the party” potentially gets in the way of avoiding greater harm and, for this reason, Alice should carry the burden of proof. This means that Alice should provide arguments against presumption, and if her arguments, ultimately, cannot persuade Mark to go to the party,<sup>18</sup> “We should skip the party” gets accepted by default. Dialogical parties should not carry equal dialogical obligations since, in the described circumstances, their practical standpoints are not equally desirable.

In summary, if proceeding on  $p$  is the most desirable practical alternative, then  $p$  is a dialogically privileged proposition and represents a practical presumption. So, the status of a practical presumption is both a *practical* status, as well as a *dialogical* status of a proposition.<sup>19</sup> In the next section, I explore the dialogical status by carefully examining the deontic functions of cognitive and practical presumptions.

#### 4. Presumptions and different conceptions of the burden of proof

The view that presumption is “closely connected to the burden of proof” (Walton 2014, p. 117) lies at the heart of every standard account of presumption. According to Rescher, presumption and burden of proof “represent correlative conceptions” (2006, p. 14) and are “opposite sides of the same coin” (2006, p. 14). Freeman agrees with this interpretation. In his opinion, “the opposite of burden of proof is presumption” (2005, p. ix). What does this mean in the context of discussion where two sides (proponent and opponent) take turns? Here are a few illustrations of how presumptions are supposed to allocate dialogical obligations.

[A] ‘Presumption’ in favour of any supposition ... implies that it must stand good till some sufficient reason is adduced against it; in short, that the Burden of proof lies on the side of him who would dispute it.” (Whately 1963, p. 112).

[W]here a proposition has the status of a presumption, then the burden of proof lies with anyone who refuses to concede it. (Pinto 2001, p. 4).

[P]resumption is defined as a modal status (or property) of a claim (or proposition) indicating that the burden of proof with respect to that claim rests with anyone who would reject it. (Godden & Walton 2007, p. 315)

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<sup>17</sup> Notice that this everyday example is closely similar to the legal “presumption of innocence.” Here, “John is innocent” has a status of practical presumption since (1) there is a legal pressure to decide whether to convict John; (2) this decision depends on whether John is innocent or guilty; (3) it is evidentially uncertain whether John is innocent or guilty; but (4) acting *as if* John is innocent and letting him free (when, in fact, John is guilty) is treated as a “lesser evil” than acting *as if* John is guilty and convicting him (when, in fact, John is innocent).

<sup>18</sup> For instance, she must prove that it is *more likely* that John will skip the party by using dialectically adequate reasons, i.e., reasons that Mark is expected to accept.

<sup>19</sup> For a detailed characterization of practical presumptions, see Ullmann-Margalit (1983), Godden (2017), and Bodlović (2020, forthcoming).

The presumption shifts a burden [of proof] to the other side to disprove it, or the proposition becomes lodged into place as a commitment of both sides. (Walton 2014, p. 117)

[T]he presumption opponent is charged with something: with the burden of showing that not- $q$ . (Ullmann-Margalit 1983, p. 151)

Setting subtle differences aside,<sup>20</sup> standard accounts appear to accept the following idea: If the proponent  $P$  puts forward  $p$  (that in the context at hand has the status of a presumption) in turn  $t_1$ , and the opponent  $O$  rejects or challenges  $p$  in turn  $t_2$ , then  $P$  does not carry the burden of proof in  $t_3$  whereas  $O$  incurs the burden of proof in  $t_{2+n}$ . I shall call this an *asymmetrical allocation of the burden of proof*.

But does the opponent  $O$  already have the burden of proof from turn  $t_3$ ? Or does  $O$  incur it only from turn  $t_4$  after the proponent  $P$  performs a special kind of speech act in  $t_3$ , and activates this burden? In other words, does turn  $t_{2+n}$  amount to  $t_3$  or  $t_4$ ?

$t_1$	$P$ :	Presumably, $p$ .
$t_2$	$O$ :	Reject: “Presumably, $p$ .”
$t_3$	?	?
$t_4$	?	?

If  $O$  incurs the burden of proof in  $t_3$ , then the allocation of the burden of proof is unconditional and immediate. In this case,  $O$  incurs the burden of proof in  $t_3$  by rejecting the presumption  $p$  in  $t_2$ , and her obligation to provide reasons does not depend on any  $P$ 's move other than the move of putting forward  $p$  in  $t_1$ . By contrast, if  $O$  incurs the burden of proof in  $t_4$ , then  $O$ 's obligation to provide reasons might be conditional on  $P$ 's move in  $t_3$ ; for instance, on whether  $P$  requests reasons from  $O$  in  $t_3$ . According to the citations above, standard accounts seem to suggest the former view. I call it an *unconditional allocation of the burden of proof*. Bearing the previous considerations in mind, I propose the following specification of the deontic function of presumption.

THE STANDARD DEONTIC FUNCTION OF PRESUMPTION: Presumptions allocate the burden of proof in an unconditional and asymmetrical manner.

To fully understand the standard deontic function of presumption, we should understand the meanings of four complicated notions: (1) allocation, (2) burden of proof, (3) (*un*)conditional allocation, and (4) (*a*)symmetrical allocation. In this paper, I mostly focus on the conceptual analysis of the “burden of proof” in the context of the theory of presumptions. This is a surprisingly demanding task. Namely, although we use the term “burden of proof” casually in ordinary parlance, it is quite complicated to determine its precise meaning. In legal scholarship, for instance, Thayer maintains that the burden of proof is an ambiguous notion that needs to be thoroughly explored and discriminated (2019, p. 75), and McCormick describes it as “the slipperiest member of the family of legal terms” (Strong 1992, p. 449). Unsurprisingly, as “the most successful jurisprudential ‘export’” (Hahn and Oaksford 2007, p. 40), the term retains its complexity in philosophy and argumentation theory.

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<sup>20</sup> For instance, that every presumption “implies” (Whatley) or “indicates” (Godden and Walton) that the opponent who rejects it carries the burden of proof does *not* necessarily mean that every presumption “shifts” (Walton) the burden of proof.

In the following (sub)sections, I offer two interpretations of the “burden of proof” and analyse whether cognitive and practical presumptions, under these different interpretations, place the burden of proof on the opponents.

#### 4.1 Presumptions, and the burden of reasoning (*BoR*)

Let us begin with the underlying core idea that everyone accepts. According to a “first approximation, having a burden of proof is being under an obligation ... to support one’s view” (Aijaz et al. 2013, p. 260) or “position” (Dare and Kingsbury 2008, p. 503; Aijaz et al. 2013, p. 262). Since the burden of proof presupposes a context of dialogue (Rescher 2006, p. 19) and, in dialogical contexts, to support means to provide reasons, one may interpret the burden of proof in such a way as that it says no more than that there is an obligation to provide reasons, of whatever kind.<sup>21</sup> Accordingly, the most general interpretation of the burden of proof,” I label the *burden of reasoning (BoR)*:

THE BURDEN OF REASONING (*BoR*) is the party’s dialogical obligation to provide *any reason* for a position (view).

How does *BoR* affect the interpretation of the deontic function of presumption? Well, it suggests that, after rejecting presumption, the opponent is obliged to *provide a reason* for her position (i.e., for “Reject: ‘Presumably, *p*’”). Two important points must be made here. First, this result is consistent with the usual characterizations of the deontic function since no standard account will deny that, after rejecting a presumption, the opponent must provide reasons. Second, this interpretation of the deontic function preserves the deontic analogy between cognitive and practical presumptions. That is, regardless of whether the proposition is epistemically plausible (“Presumably, the Earth is round”) or, in particular circumstances, desirable to act upon for non-epistemic reasons (“Presumably, John will be at the party”), the opponent must provide reasons after rejecting a presumption.

$t_1$	<i>P</i> :	Presumably, <i>p</i> .
$t_2$	<i>O</i> :	Reject: “Presumably, <i>p</i> .”
$t_{2+n}$	<i>O</i> :	<i>Reason</i> : <i>r</i> . [= discharging the <i>BoR</i> ]

If the *BoR* expresses the core idea which underlies the burden of proof, is consistent with the standard characterization of deontic function, and preserves the similarity between two types of presumption,<sup>22</sup> why shouldn’t we conclude the analysis of deontic function at this point? Why shouldn’t we define the burden of proof in terms of *BoR*? The answer is twofold. First, since a more informative conception of the burden of proof opens essential theoretical questions and reveals differences between cognitive and practical presumptions, it is more analytically useful. Second, philosophers and argumentation scholars (traditional theorists of presumptions included) typically adopt a more specific conception of the burden of proof. What, exactly, do they mean by this conception?

#### 4.2 Presumptions, and the burden of arguing (*BoA*)

<sup>21</sup> Though the core idea is uncontroversial, to interpret the burden of proof as requiring nothing more specific than *reasons* happens to be controversial, as we shall see below. So, that everybody accepts the core idea does not mean that everybody *finds it accurate*. Instead, it means that accepting the core idea is necessary for accepting any other, accurate, more specific interpretation of burden of proof. In other words, the more precise interpretations imply or presuppose this broader, core characterization.

<sup>22</sup> Contributing, thereby, to the overall coherency of standard accounts.

Let us focus on the obligation to “provide a reason.” This general dialectical obligation includes distinct sub-obligations, most notably the obligation to provide an *argument*, and the commitment to provide an *explanation*. Philosophers and argumentation scholars, however, typically contend that “[t]o have the burden of proof is to be rationally required to argue for or provide evidence for your position” (Dare and Kingsbury 2008, p. 503). In other words, the burden of proof is an obligation of an “arguer” (Johnson 2000, p. 194) to “argue” (van Eemeren and Houtlosser 2002, pp. 17) or present “arguments” (Walton 1988, p. 234; Freeman 2005, p. ix; Govier 2010, p. 175; van Laar and Krabbe 2013, p. 202). According to this interpretation, the burden of proof is not only the burden of reasoning but also, more accurately, the *burden of arguing* (*BoA*).

THE BURDEN OF ARGUING (*BoA*) is the party’s dialogical obligation to provide an *argumentative reason* for a position (view).

To understand the nature of *BoA*, we must know that the paradigmatic goal of arguing is to persuade the other party (Walton 1990; Blair 2012) or to resolve the initial difference of opinion (van Eemeren and Grootendorst 2004). To achieve this goal, an arguer should offer reasons that the other party, ideally, has already conceded (van Laar and Krabbe 2013, p. 212) or will most likely concede.<sup>23</sup> I call these reasons *argumentative reasons*. In effect, the burden of arguing is an obligation to provide reasons acceptable to the other party (typically) for the sake of persuading her.

What does this mean for the deontic function of presumptions? Are presumptions supposed to place the burden of arguing on the opponent’s side? According to standard accounts, *they are*. Traditional theorists contend that the opponent must “disprove the proposition in question” (Walton 2014, p. 274), adduce “sufficient reason ... against it” (Whatley 1963, p. 112), or “[show] that not-*q*” (Ullmann-Margalit 1983, p. 151). In dialogical contexts, however, the opponent can hardly achieve these goals by merely offering an explanation. Rather, to disprove, defeat, or rebut a (presumed) proposition, the opponent must present “an argument against it” (Pinto 2001, p. 4) or, in Rescher’s words, adduce “appropriately weighty counterarguments” (2006, p. 16). Cognitive and practical presumptions are supposed to be the same in this respect: according to standard accounts, the opponent is obliged to provide an argument regardless of whether she rejects “Presumably, the Earth is round” or “Presumably, John will be at the party.”

$t_1$	<i>P</i> :	Presumably, <i>p</i> .
$t_2$	<i>O</i> :	Reject: “Presumably, <i>p</i> .”
$t_{2+n}$	<i>O</i> :	<i>Argumentative reason</i> : <i>a</i> . [=discharging the <i>BoA</i> .]

To understand why standard accounts require revisions, let us start by analysing the deontic function of cognitive presumptions. Is the opponent indeed *obliged* to present an argument after rejecting cognitive presumption? In the context of an epistemic dialogue, it seems rather doubtful that the opponent must immediately aim at persuasion and present a reason that is acceptable to the proponent. In the Flat Earth example, Steve might (also) be allowed to offer an explanation after rejecting Diane’s standpoint “Presumably, the Earth is round,” i.e., he might be allowed to discharge the burden of reasoning (also) by satisfying the

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<sup>23</sup> Scholars refer to this requirement by using different notions, such as “premise acceptability” (Johnson 2000, p. 194; Govier 2010, p. 87), or “premise adequacy” (Goodwin 2001, p. 2).

burden of explanation (Rescorla 2009a; van Laar and Krabbe 2013). Why is this so? And what, exactly, is the burden of explanation?

### 4.3 Cognitive presumptions, and the burden of explanation (*BoE*)

To answer these questions, let us start from an undeniable fact: since Diane and Steve decided to participate in a discussion about the shape of Earth, both should have some argumentative obligations. For instance, Diane has the burden of arguing throughout a debate because she must make objections and cast doubt on Steve's standpoint and arguments.<sup>24</sup> However, since Diane can (successfully) discharge this burden only by presenting reasons acceptable to her opponent, Steve's rejection of "Presumably, the Earth is round" puts her in an awkward position. Which reasons can she possibly use? If Steve rejects a proposition that, in normal circumstances, everyone in a right mind concedes, if the well-known and overwhelming evidence is insufficient to persuade him that the Earth is round, then what kind of reason can convince Steve of *anything regarding this matter*? Steve has shaken the very foundations of reasonable dialogue without providing any guidance on what grounds to continue. Without this kind of guidance, Diane will probably be unable to construct a persuasive argument.

In the Flat Earth example, Diane is facing a complex problem. On the one hand, she cannot use many plausible, well-known, and widely-accepted reasons since they are dialectically inadequate (Steve implicitly rejects them by rejecting "The Earth is round"). On the other hand, Diane cannot easily anticipate which reasons are dialectically adequate: since Steve refuses usual, typical reasons, she can do nothing but *guess* what reasons might persuade him. The burden of explanation seeks to resolve the latter, transparency issue. Steve should "elucidate [his] position, thereby helping the original speaker isolate the relevant mutually acceptable premises" (Rescorla 2009a, p. 100)<sup>25</sup> or, in van Laar and Krabbe's (2013) words, Steve should explain the "motivation for [his] position" (p. 213) in order to provide "a strategic advice" (p. 212) or "strategic guidance" (p. 213). This strategic advice should give Diane a chance to make a persuasive argument.

The considerations connected to the burden of explanation are different from ones related to the burden of arguing.<sup>26</sup> Namely, providing an explanation "is not an attempt to convince the other and need not start from propositions conceded by the other" (van Laar and Krabbe 2013, p. 212). Thus, the burden of explanation does not require argumentative, but *explanatory reasons*.

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<sup>24</sup> It is not correct to say that (cognitive) presumption *p* exempts the proponent from *any* burden of arguing *throughout the whole discussion*. In my opinion, as far as the proponent is concerned, the presumption does two things. First, immediately after the opponent rejects *p*, it exempts the proponent from *any* burden of arguing. Second, in the discussion that follows, the presumption exempts the proponent from a burden of arguing in favor of *p* (despite the fact that *p* is the proponent's standpoint), but it does *not* exempt her from presenting arguments and objections against the opponent's views. In other words, presumptions work in the proponent's favor by allowing her to win the mixed discussion by being a successful critic.

<sup>25</sup> Although Rescorla (2009a) seems to connect explanations to "rebuilding" the common ground, I believe that the purpose of explanation is more general. That is, even if explanations are legitimate only (or primarily) when common ground is at stake, the purpose of explaining might be to provide *any* premises that the proponent might use to make a persuasive argument. Sometimes, these premises can be acceptable only to the opponent and, thus, cannot represent new common ground. However, the proponent can still make use of them to make a persuasive case.

<sup>26</sup> When Steve attempts to persuade Diane that rejecting "Presumably, the Earth is round" is acceptable, he must use reasons that Diane considers acceptable. Steve might, for instance, say: "We should not trust everything that science says! Scientists have been wrong, you know." This argument will hardly persuade Diane, but Steve does make a genuine effort to present the premise that Diane should accept.

THE BURDEN OF EXPLANATION (*BoE*) is the party's dialogical obligation to provide an *explanatory reason* for a position (view).

After rejecting "Presumably, the Earth is round," Steve can offer the following explanation: "Our government fabricated the evidence that the Earth is round." This explanatory reason is neither persuasive nor conceded by Diane, but it is helpful in resolving the aforementioned transparency issue: it will show Diane what to attack, as well as *how* to attack Steve's position adequately.<sup>27</sup>

$t_1$	<i>P</i> :	Presumably, <i>p</i> .
$t_2$	<i>O</i> :	Reject: "Presumably, <i>p</i> ."
$t_{2+n}$	<i>O</i> :	<i>Explanatory reason</i> : <i>e</i> . [= discharging the <i>BoE</i> ]

Notice, for instance, that the previous explanation makes Steve committed to a more general claim, namely, "Governments fabricate evidence about the shape of Earth." After realizing this, Diane might exploit Steve's commitment as a premise of her (adequate) counterargument. Imagine that she decides to construct an alternative conspiracy theory, and says: "But our government could have fabricated the Flat Earth theory just to keep the public away from the important stuff. The Flat Earth movement had the best media coverage on the day when our government passed the controversial law on public health. Don't you find this suspicious?" To be sure, Diane's counterargument does not show that the Earth is round, but it might show that "The Earth is round" and "The Earth is disc-shaped" must be equally acceptable to Steve given his commitment set or, in particular, his commitment that governments fabricate evidence. Since Diane has a presumption in her favour, this is all she needs to do to (successfully) discharge her burden of arguing and to prevent Steve from winning a discussion.

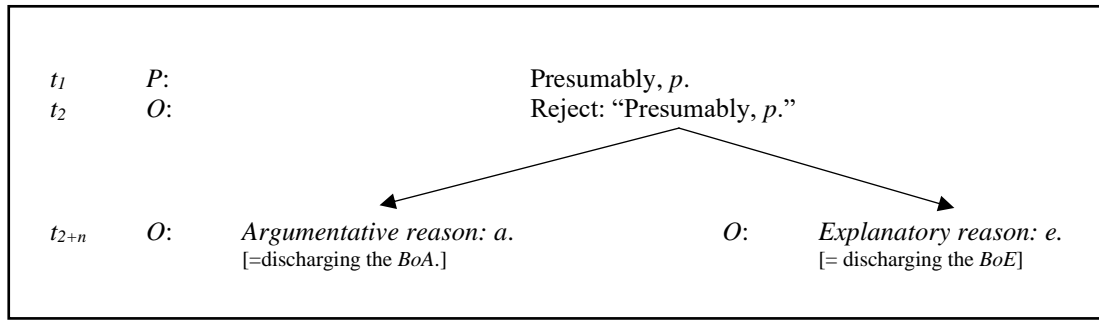
In the Flat Earth example, Steve's explanation, however bizarre, plays a constructive dialectical role because it helps Diane to participate in a discussion fruitfully. Also, it nicely coheres with the widely-accepted, "Gricean" view that argumentative discussion is, at least in part, a cooperative enterprise. For these two reasons, at least, explaining seems like a reasonable dialectical choice. But if explaining is dialectically reasonable, then how can Steve be obliged to give an argument, as standard accounts of deontic function suggest? If he is allowed to discharge the burden of explanation, how can he carry the burden of arguing (proof)? Do cognitive presumptions, ultimately, asymmetrically allocate the burden of arguing (*BoA*) or the burden of explanation (*BoE*)?

I believe that cognitive presumptions allocate neither of these burdens. Technically, once the opponent rejects a cognitive presumption, he is not immediately obliged to give an argument (in order to defend her position), and he is not immediately obliged to give an explanation (in order to provide strategic guidance). Since giving an argument and giving an explanation are both reasonable moves, I believe that the opponent's obligation is rather a disjunction: once he rejects a cognitive presumption, he is obliged *either* to give an argument *or* to explain the rejection. Put differently, the opponent incurs the burden of reasoning (*BoR*), and he can discharge this burden in a more competitive (by discharging the *BoA*) or a more cooperative fashion (by discharging the *BoE*).<sup>28</sup>

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<sup>27</sup> After Steve's explanation, Diane knows that to cast doubt on "The Earth is disc-shaped" she must, at some point, make a persuasive case that "The Earth is round" might not be a government's fabrication. More importantly, she can also use Steve's explanation to derive adequate reasons for her arguments.

<sup>28</sup> Thus, in principle, presenting an argument is the opponent's right rather than an obligation: since explaining is allowed, arguing is not required. Of course, the opponent might become obliged to argue in turn  $t_4$  if the proponent demands argument in turn  $t_3$ , but this would imply that the opponent's burden of arguing (proof) is conditional upon some move made by the proponent (other than putting forward a presumption in turn  $t_1$ ). However, it is not



**Fig. 1** A profile of dialogue: cognitive presumption

As a result, the standard accounts of the deontic function of presumptions do not seem plausible: (cognitive) presumptions asymmetrically allocate the burden of proof only if we understand the burden of proof in terms of *BoR*. But the notion of burden of proof is more naturally understood in terms of *BoA*, and as soon as we accept the usual, more specific and natural interpretation of burden of proof, cognitive presumptions do not place the burden of proof on their opponents (since *BoR* does not necessarily entail *BoA*).

What are the implications of this conclusion for the relationship between cognitive and practical presumptions? Are the opponents allowed to choose and offer explanations or arguments after rejecting practical presumptions, or do practical presumptions, unlike cognitive ones, asymmetrically allocate the burden of proof (in the strict sense of the *BoA*)?

#### 4.4 Practical presumptions, and the burden of explanation (*BoE*)

I believe that practical and cognitive presumptions have distinct deontic functions. The differences, however, are subtle. To make that clear, I need to distinguish between two views on when one could impose the burden of explanation on the challenger of a practical presumption. I call them a stricter view and a looser view.

According to a *stricter view*, a burden of explanation should only suffice when someone challenges a “common ground” proposition. Since the rejection of a widely-accepted (or mutually-accepted) proposition “counts as a substantial change of the nature of the dialogue” (van Laar and Krabbe 2013, p. 210), the opponent must make sure that the new conditions of making a persuasive argument are transparent to the proponent. Nevertheless, none of these considerations directly apply to practical presumptions since, in the standard view, practical presumptions are not common ground propositions. Instead, they are “new intellectual resources” used at some later stage of deliberation to “proceed with our undertakings” (Godden 2017, p. 487). Accordingly, the opponent does not change the nature of the dialogue by rejecting a practical presumption, and the proponent’s task of finding dialectically adequate reasons should not be especially demanding. Let us illustrate this on the Party example.

- Alice: I would like to go to the party tonight.
- Mark: I would like to go, too. But if it is uncertain whether John will be there, I would rather stay at home. His presence might entirely ruin our evening.
- Alice: I agree. As long as there is a reasonable chance that John will come to the party, we

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clear that standard accounts of deontic function propose the conditional allocation of the burden of proof (as briefly mentioned at the beginning of Sect. 4). So, as long as the burden of arguing (proof) is supposed to be unconditionally placed on the opponent in turn  $t_3$ , I believe that the standard accounts are wrong: if some dialectical obligation gets unconditionally allocated on the opponent (after she rejects a cognitive presumption in  $t_3$ ), then this is the burden of reasoning rather than the burden of arguing (proof).

- should err on the side of safety and skip it. It is not worth the risk.
- Mark: Can we somehow check whether he attends the party?
- Alice: I asked some colleagues, but they never texted me back. Anyway, we should decide quickly. The train is about to leave.
- Mark: Isn't John out of town right now? He was bragging about his upcoming trip to Spain, remember?
- Alice: Yes, but he must be at work day after tomorrow, so...
- $t_1$  Mark: If he is back in town, he will probably be at that party. Since we are uncertain about his whereabouts, let's just skip the party this time. [= "Presumably, John will be at the party."]
- $t_2$  Alice: I think we should go.

By rejecting "Presumably, John will be at the party" in turn  $t_2$ , Alice makes a surprising move. Although she, technically, does not challenge a common ground proposition,<sup>29</sup> she rejects a position that follows from her commitments.<sup>30</sup> So, Alice should provide a reason for her rejection, but is she allowed to offer an explanatory reason? Does it suffice to discharge the burden of explanation?

If only attacks of common ground propositions incur a burden of explanation, then it does not suffice to impose on the opponent the mere burden to explain her position. Namely, the purpose of explaining is to offer strategic guidance, but, when a practical presumption gets challenged, the proponent does not seem to need any advice. Even before Alice gives any reason in  $t_{2+n}$ , Mark, in principle, has a pretty clear idea of what might persuade her to skip the party. Starting from the belief that Alice still wants to avoid John, Mark can use any reason which proves that John will definitely (or most probably) come to the party. He can, perhaps, call John and tell Alice the bad news, or provide evidence that John is already in town. Of course, Mark might be unable to give an adequate, persuasive argument at this point, but this is an entirely different matter. What is crucial is that he has a good idea of what, in principle, might constitute an adequate, persuasive argument and that, consequently, he does not desperately need strategic advice. Since this need underlies the burden of explanation, explaining becomes irrelevant and, therefore, does not suffice in the Party example.

In the stricter view, when a practical presumption gets rejected, explaining represents a means without an end: it is designed to resolve a dialectical problem that, in this context, does not arise. For this reason, the opponent should not be allowed to only explain her position after rejecting practical presumption, and since she should not be allowed only to explain her view, she must be *obliged* to present (in addition) an argument.

- |       |            |                                  |
|-------|------------|----------------------------------|
| $t_1$ | <i>P</i> : | Presumably, <i>p</i> .           |
| $t_2$ | <i>O</i> : | Reject: "Presumably, <i>p</i> ." |

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<sup>29</sup> There are at least three reasons why "Presumably, John will be at the party" does not belong to the common ground. First, "John will be at the party" is certainly not a widely-accepted proposition supported by many epistemic sources (like "The Earth is round"). Second, "John will be at the party" is not a shared concession, i.e., the proposition accepted by Alice and Mark at the beginning of the dialogue. Third, even when we interpret this proposition in the pragmatic, action-oriented sense of "We should *act as if* John will be at the party," Alice and Mark still do not accept it at the beginning of a dialogue. At best, they accept a (presumptive) rule "If it is uncertain whether John will be at the party, then we should act as if John will be at the party" and then, in turn  $t_1$ , Mark derives presumption based on this rule and its antecedent (basic fact) "It is uncertain whether John will be at the party." In summary, a practical presumption is not a common ground premise (that should be) accepted *before* the main discussion to enable a desirable *start* of the discussion. Rather, it is a provisional conclusion drawn at some *later point* of the discussion, to enable a desirable *end* of deliberation (i.e., avoiding greater harm in the context of evidential uncertainty and pressure to make a timely decision).

<sup>30</sup> That is, for all that Mark knows, Alice seems committed to both a presumptive rule and the basic fact in turn  $t_2$ . Consequently, one would expect that she will not reject a presumption in  $t_2$ .

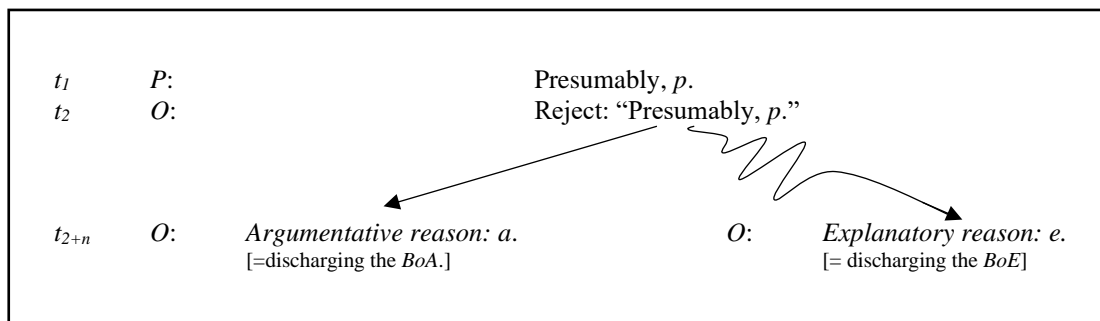


$t_{2+n}$  O: Argumentative reason:  $a$ . [= discharging the  $BoA$ ]

**Fig. 2** A profile of dialogue: practical presumption (*strict view*)

According to a *looser view*, the burden of explanation also suffices when a challenged proposition is not part of the common ground. To be sure, the proponents will especially need guidance when the common ground propositions get rejected, but dialectical rules should also permit explanations when common ground is not at stake, and the discussion is already underway. In principle, offering strategic advice is a cooperative move under any circumstances, and the dialectical rules should not penalize the opponent for being “too cooperative.” They must allow explanations and strategic advice even when the opponent’s explanations and guidance are, perhaps, unnecessary.

But how are practical presumptions, then, different from cognitive ones? If both types of presumptions allow explanations, as well as arguments, then, after they are rejected, all presumptions place the burden of reasoning ( $BoR$ ) on their opponents. Do cognitive and practical presumptions, under the looser interpretation of the burden of explanation, have the same deontic function? I propose the following answer: In principle, they might, but, in concrete dialogical practice, they do (should) not. Even in the looser view, we can do justice to the differences between cognitive and practical presumptions: in principle, dialectical rules might permit the opponent to explain the rejection of a practical presumption but, unlike in the cognitive case, *they should strongly encourage the opponent to provide an argument* (due to the special circumstances of uncertainty and pressure). In the profile below, the suboptimal response is illustrated by a curved line.



**Fig. 3** A profile of dialogue: practical presumption (*looser view*)

What makes explanations suboptimal in practical cases? Why should rules, in the Party example, encourage Alice to support “We should go to the party” by argument rather than explanation (in some turn  $t_{2+n}$ )? We mentioned one reason previously: since Alice does not reject a common-ground proposition, offering strategic advice to Mark seems unnecessary. The more important reasons, however, are related to the view that opponent’s explanations are usually irrelevant or even detrimental to the optimal resolution of deliberation. How is this possible?

Let us remember that explanatory reasons are not aiming at persuasion and that, after rejecting a presumption in  $t_2$ , Alice might say the following: “The tea leaves tell me that John will not come to the party.” Since Mark does not believe in reading tea leaves, her explanation is not persuasive, but it seems dialectically permissible. From a dialectical viewpoint, Alice does not commit any argumentative fallacy (since, technically, she does not provide an argument) and, more importantly, she is cooperative and transparent. She cooperates with Mark by presenting the evidence she considers relevant and, presumably, the only additional evidence she is capable of presenting at  $t_{2+n}$  (offering, thereby, strategic advice). To see why

her explanation is permissible, but not dialectically optimal we must appreciate two deliberation limitations underlying the Party example: *uncertainty* and *time pressure*. Since Mark and Alice both wish to avoid greater harm (seeing John), they will attend the party only if they are sufficiently certain that John will skip it, and, by turn  $t_2$ , they seem uncertain about John's whereabouts. Also, the time for gathering evidence about John's whereabouts is limited: the train is about to leave, and Mark and Alice must decide quickly.

I believe that Alice's explanation is *irrelevant* because it cannot affect the uncertainty and, thereby, cannot change the default course of action.<sup>31</sup> Namely, when the evidence is uncertain, practical presumptions produce a default course of action and, in the Party example, this action is skipping the party: if at the time when Mark and Alice must go to the train station, it remains (dialectically) uncertain whether John will come to the party, then Mark and Alice will skip the party. To take an alternative action, Mark and Alice must agree that it became sufficiently certain that John will skip the party. But since reading tea leaves will not persuade Mark, the proposition "John will skip the party" will remain dialectically uncertain, and the original presumption will remain in place. As a result, the proposed explanation does not affect the outcome of deliberation: Mark and Alice will skip the party, i.e., they will do what they would have done even if the explanation was not offered. So, why offer explanations, even if they are allowed? In the described circumstances, explaining seems pointless.<sup>32</sup>

Not only is providing explanation irrelevant, but it is also *detrimental*. Practical presumptions arise when time is limited and, thereby, represents an especially valuable resource. In these special circumstances, it is usually not reasonable to spend time on giving (only) explanations since they, as we have seen, do not change the default outcome of deliberation. Given that parties want to optimize their chances to arrive at the best decision, which might be different from a default decision, they should spend the time in a more constructive way. The first, obvious choice is to present and discuss arguments if they are already at hand. If, in the turn  $t_{2+n}$ , Alice has both an explanation and an argument up her sleeve, then she should present an argument. By doing so, Alice will have a better chance to persuade Mark, affect dialectical uncertainty, and move deliberation towards optimal resolution. The second, less obvious choice might be to spend time on finding arguments that are not already at hand. Suppose that in the turn  $t_{2+n}$ , Alice has a choice: to provide an explanation, or to search for reasons that might be relevant for making the best decision. For instance, instead of spending time discussing tea leaves, Alice might call John and ask him about his whereabouts. If Mark and Alice consider John reliable, acquiring this information will have a direct impact on making an optimal decision in the Party example.<sup>33</sup>

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<sup>31</sup> In the context of dialogue, certainty is understood in a dialectical sense: proposition  $p$  is certain if, among other things, both parties agree that it is (likely) true. Otherwise, it is treated as uncertain. Notice that this does not exclude objective epistemic considerations. I do not claim that mutual agreement that  $p$  is (likely) true is sufficient condition to render  $p$  dialectically certain; instead, I claim that it is a necessary condition to render  $p$  dialectically certain.

<sup>32</sup> But what happens if Mark uses the information about tea leaves to persuade Alice that John's whereabouts are still uncertain? Does explanation, perhaps, affect the outcome of deliberation by giving strategic guidance to Mark? I believe that it does not. The presumption stays in place as long as Mark remains skeptical about the reliability of tea leaves and John's whereabouts, and this does not seem to depend on whether his future attempt to persuade Alice, by exploiting her explanation concerning tea leaves, is successful or not.

<sup>33</sup> One may think that this renders a *looser view* implausible: since giving explanation is detrimental in these special circumstances, it *should not* be permitted. But one should acknowledge that, at least sometimes, explanations can be persuasive to a limited degree and, in a way, represent weak arguments. In other words, that the proponent does not accept the opponent's explanatory reason could mean that she finds this reason acceptable to a very *small degree*. However, in situations of uncertainty, where any piece of evidence might be relevant to arrive at the best decision, these explanations might not be entirely detrimental and could be relevant to some limited extent. I believe that, as far as rejections of practical presumptions are concerned, explanations should be

To sum up, usually, when the opponent rejects a practical presumption, presenting an explanation is not only irrelevant but also, literally, a waste of time. Since time is a limited resource, explaining might come with the high opportunity cost and, thereby, be detrimental to the optimal resolution of the decision-making process. Nothing similar appears to happen when the opponent rejects cognitive presumption. As a result, two types of presumptions have distinct deontic functions.

THE DEONTIC FUNCTION OF COGNITIVE PRESUMPTION: After they are rejected, cognitive presumptions allocate the burden of reasoning (*BoR*)—i.e., either the burden of arguing (*BoA*) or the burden of explanation (*BoE*)—on the opponent's side.

THE DEONTIC FUNCTION OF PRACTICAL PRESUMPTION: After they are rejected, cognitive presumptions, *in principle*, allocate the burden of reasoning (*BoR*)—i.e., either the burden of arguing (*BoA*) or the burden of explanation (*BoE*)—on the opponent's side. However, *in practice*, they should usually allocate only the burden of arguing (*BoA*).

Admittedly, these characterizations are not complete. First of all, they deal only with the opponent's obligations. But what about the proponent obligations? Is the proponent exempted from the burden of proof? And if she is, then in which sense of the term? Furthermore, the characterization does not tell us anything about the conditionality of the opponent's obligation. Is the opponent immediately obliged to give reasons, or does this obligation depend on the proponent's request for reasons? And who gets to choose whether argumentative or explanatory reasons must be presented: the proponent or the opponent? Finally, the crucial notion of "asymmetrical allocation" has not been explored at all.

Nevertheless, even at the preliminary stage, our results show that standard accounts of presumption require qualifications. If we accept the natural conception of the burden of proof (in the sense of the burden of arguing), then presumptions do not asymmetrically allocate the burden of proof. Also, cognitive and practical presumptions might have distinct deontic functions. Although they both place the burden of reasoning on the opponent, practical presumptions either require (*stricter view*) or strongly recommend arguments (*looser view*). Since this is not the case with cognitive presumptions, they potentially create different patterns of dialectical interaction.

## 5. Conclusion

According to standard accounts, presumptions are dialectically privileged, yet defeasible, propositions: if the opponent rejects a presumption, she is supposed to carry the burden of proof, and the presumption is acceptable until the burden of proof is (successfully) discharged. Standard accounts acknowledge that there are various types of presumptions, but they treat the *deontic function* as a shared dialectical feature or some sort of common denominator. Put simply, once rejected, *all* presumptions are supposed to place the *burden of proof* on the opponents.

In this paper, I analysed the deontic function by taking into account (1) different types of presumption, and (2) distinct conceptions of the burden of proof. First, I argued that presumption, taken in the abstract sense, does not place the burden of proof on the opponent, but rather the burden of reasoning. This conclusion is not entirely in line with the standard accounts since the burden of proof is, typically, a narrower conception than the burden of

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*permitted but not recommended* since, at least sometimes, they might contribute to something more than providing a strategic guidance.

reasoning. Second, I argued that, at a less abstract level, cognitive and practical presumptions distribute different dialectical obligations. To be sure, they both place the burden of reasoning on the opponent, but whereas cognitive presumptions require either arguments or explanations, practical presumptions seem to require arguments. Thus, at the level of a concrete dialogical implementation, the deontic analogy (deontic uniqueness), proposed by standard accounts, does not hold. Presumptions have distinct deontic functions.

The results of this paper are relevant for the argumentation theory, in particular, and philosophy, in general. In argumentation theory, for instance, they contribute to the normative study of the opponent's critical reactions (see Krabbe and van Laar 2011; van Laar and Krabbe 2013). In philosophy, they contribute to the ongoing discussion between dialectical foundationalists and dialectical egalitarianists (see Leite 2005; Rescorla 2009a, 2009b). For obvious reasons, they add to the dialectical study of presumptions. Nevertheless, the present results are provisional, and much additional work is needed to test their tenability.

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## References

Aijaz, I., J. McKeown-Green and A. Webster. (2013). Burdens of proof and the case for unevenness. *Argumentation* 27 (3), 259–282.

Bodlović, P. (2020). [Forthcoming].

Bermejo-Luque, L. (2019). On the Relationship between Presumptions and Burdens of Proof. In: H.V. Hansen, F.J. Kauffeld, J.B. Freeman, and L. Bermejo-Luque (Eds.), *Presumptions and burdens of proof. An anthology of argumentation and the law* (pp. 244-257), Tuscaloosa: The University of Alabama Press.

Blair, A. (2012). Argumentation as Rational Persuasion. *Argumentation* 26, 71–81.

Cargile, J. (1997). On the Burden of Proof. *Philosophy* 72 (279), 59-83.

CNBC.com staff. (2016). Trump tweets new voter fraud claims, blasts CNN, but offers no evidence. <https://www.cnbc.com/2016/11/28/trump-tweets-new-voter-fraud-claims-blasts-cnn-but-offers-no-evidence.html>, 9 11 2019.

Dare, T. and J. Kingsbury. (2008). Putting the Burden of Proof in Its Place: When Are Differential Allocations Legitimate? *The Southern Journal of Philosophy* XVI, 503-519.

Flew, A. (1972). The Presumption of Atheism. *Canadian Journal of Philosophy* 2 (1), 29-46.

Freeman, J.B. (2005). *Acceptable premises*. Cambridge: Cambridge UP.

Godden, D. (2017). Presumption as a Modal Qualifier: Presumption, Inference, and Managing Epistemic Risk. *Argumentation* 31 (3), 485-511.

Godden, D. (2019). Analyzing Presumption as a Modal Qualifier. In: H.V. Hansen, F.J. Kauffeld, J.B. Freeman, and L. Bermejo-Luque (Eds.), *Presumptions and burdens of proof. An*

*anthology of argumentation and the law* (pp. 206-220), Tuscaloosa: The University of Alabama Press.

Godden, D., and D. Walton. (2007). A theory of presumption for everyday argumentation. *Pragmatics & Cognition* 15 (2): 313–346.

Goodwin, J. (2001). One Question, Two Answers. *OSSA Conference Archive*, 1-16.

Govier, T. (2010). *A Practical Study of Argument* (7<sup>th</sup> edition). Wadsworth, Cengage Learning.

Hahn, U. and M. Oaksford. (2007). The burden of proof and its role in argumentation. *Argumentation* 21 (1), 39-61.

Hansen, H.V. (2019). Historical selections. In: H.V. Hansen, F.J. Kauffeld, J.B. Freeman, and L. Bermejo-Luque (Eds.), *Presumptions and burdens of proof. An anthology of argumentation and the law* (pp. 5-19), Tuscaloosa: The University of Alabama Press.

Johnson, R. (2000). *Manifest rationality: a pragmatic theory of argument*. Mahwah, New Jersey: Lawrence Erlbaum Associates, Inc.

Kauffeld, F. (2003). The ordinary practice of presuming and presumption with special attention to veracity and the burden of proof. In F. H. van Eemeren, et al (Eds.), *Anyone who has a view: Theoretical contributions to the study of argumentation* (pp. 133-146), Dordrecht: Springer Science+Business Media.

Kauffeld, F.J. (1998). Presumptions and the Distribution of Argumentative Burdens in Acts of Proposing and Accusing. *Argumentation* 12 (2), 245-266.

Kauffeld, F.J. (2005). Presumptions and Shifting the Burden of Proof. Paper Presented at the IPrA Conference. [http://www2.arnes.si/~ffljzagar/Kauffeld\\_paper.pdf](http://www2.arnes.si/~ffljzagar/Kauffeld_paper.pdf). 10 October, 2019.

Kelly, T. (2005). Moorean facts and belief revision, or can the skeptic win? *Philosophical Perspectives* 19, 179-209.

Koplin, J. and M. Selgelid. (2015). Burden of proof in bioethics. *Bioethics* 29 (9), 597–603.

Krabbe, E.C.W. and J.A. van Laar. (2011). The Ways of Criticism. *Argumentation* 25, 199-227.

Leite, A. (2005). A localist solution to the regress of epistemic justification. *Australasian Journal of Philosophy* 83 (3), 395-421.

Lewiński, M. (2017). Argumentation Theory Without Presumptions. *Argumentation* 31 (3), 591-613.

Lycan, W.G. (2003). Free will and the burden of proof. *Royal Institute of Philosophy Supplement* 53, 107–122.

Macagno, F. and D. Walton. (2011). Reasoning from paradigms and negative evidence. *Pragmatics & Cognition* 19 (1), 92-116.

- Pascal, B. (2004). *Pensées* (edited and translated by Roger Ariew). Indianapolis/Cambridge: Hackett Publishing Company.
- Pigliucci, M. and M. Boudry. (2014). Prove it! The Burden of Proof Game in Science vs. Pseudoscience Disputes. *Philosophia* 42(2), 487-502.
- Pinto, R.C. (2001). *Argument, inference and dialectic: collected papers on informal logic* (with an introduction by Hans V. Hansen). Dordrecht: Kluwer.
- Prakken, H. and G. Sartor. (2006). Presumptions and Burdens of Proof. In T. M. van Engers (Ed.), *Legal Knowledge and Information Systems: JURIX 2006: The Nineteenth Annual Conference* (pp. 21-30). Amsterdam: IOS Press.
- Räikkä, J. (1997). Burden of Proof Rules in Social Criticism. *Argumentation* 11, 463-477.
- Rescher, N. (1977). *Dialectics: A controversy-oriented approach to the theory of knowledge*. Albany, NY: SUNY Press.
- Rescher, N. (2006). *Presumption and the practices of tentative cognition*. Cambridge: Cambridge UP.
- Rescorla, M. (2009a). Shifting the burden of proof? *Philosophical Quarterly* 59 (234), 86-109.
- Rescorla, M. (2009b). Epistemic and dialectical regress. *Australasian Journal of Philosophy* 87(1), 43–60.
- Scriven, M. (1966). *Primary philosophy*. New York: McGraw-Hill.
- Strong, J.W. (1992). *McCormick on Evidence* (4<sup>th</sup> edition). St Paul, Minnesota: West Publishing Co.
- Thayer, J.B. (2019). The Burden of Proof. In H.V. Hansen, F.J. Kauffeld, J.B. Freeman, and L. Bermejo-Luque (Eds.), *Presumptions and burdens of proof. An anthology of argumentation and the law* (pp. 74-83). Tuscaloosa: The University of Alabama Press.
- Tseronis, A. (2009). *Qualifying Standpoints. Stance adverbs as a presentational device for managing the burden of proof* (doctoral thesis). Utrecht: LOT.
- Ullmann-Margalit, E. (1983). On presumption. *Journal of Philosophy* 80 (3), 143–163.
- van Eemeren, F.H., R. Grootendorst and A. Francisca Snoeck Henkemans. (2002). *Argumentation: Analysis, Evaluation, Presentation*. Mahwah, New Jersey/London: Lawrence Erlbaum Associates.
- van Eemeren, F. H., and P. Houtlosser. (2002). Strategic Maneuvering with the burden of proof. In F. H. van Eemeren (Ed.), *Advances in Pragma-Dialectics* (13-29). Sic Sat/Amsterdam.

van Eemeren, F. H. and R. Grootendorst. (2004). *A Systematic Theory of Argumentation. The Pragma-Dialectical Approach*. Cambridge: Cambridge UP.

van Laar, J.A. and E.C.W. Krabbe. (2013). The Burden of Criticism: Consequences of Taking a Critical Stance. *Argumentation* 27 (2), 201-224.

Walton, D. (1988). Burden of Proof. *Argumentation* 2 (2), 233–254.

Walton, D. (1990). What is reasoning? What is an argument? *The Journal of Philosophy* 87 (8), 399-419.

Walton, D. (2014). *Burden of proof, presumption and argumentation*. New York: Cambridge UP.

Whatley, R. (1963). *Elements of Rhetoric* (7th ed.). Carbondale IL: Southern Illinois University Press.

Williamson T. (2011). Philosophical expertise and the burden of proof. *Metaphilosophy* 42 (3), 215-229.