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Commentary on: H. V. Hansen's "Theories of Presumptions and Burdens of Proof"

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If analytic philosophy is conceptual analysis, then at the least the first section of Hans Hansen's "Theories of presumptions and burdens of proof" is an exercise in analytic philosophy. The target of this exercise is the concept of "presumption," a concept which is in contemporary argumentation theory generally regarded as crucial to the analysis and evaluation of argumentative discourse. Yet, this concept has not received the attention that it apparently deserves. Despite the efforts of Nicholas Rescher, whose epistemic analysis of presumptions is thorough and fundamental enough to be a worthy starting point for a philosophical discussion on the nature of presumptions, no such discussion has evolved. As a consequence, there is nothing like a reasoned and well-founded consensus on the issue of presumptions. Unlike, for instance, the term *presupposition*, the term *presumption* is still largely used in a non-technical sense in order to refer to any kind of assumption that plays a supposedly undisputed role in someone's reasoning or argumentation. It is clear that Hansen would like to change this unfortunate situation. In his paper, he therefore brings the concept of presumption once more to centre of the philosophical stage in the study of argumentation.

There have certainly been earlier philosophers who took a serious interest in the subject of argumentation, such as Richard Whately and Alfred Sidgwick, who have addressed the issue of presumptions in some detail. There are also several contemporary philosophers who are not so much interested in argumentation but are for other reasons attracted to the subject of presumptions, such as Edna Ullmann-Margalit. On top of that, there are contemporary argumentation theorists who are not primarily from a philosophical perspective concerned with presumptions but from a pragmatic perspective, such as Fred Kauffeld and Douglas Walton, and argumentation theorists such as the pragma-dialecticians Frans van Eemeren and Rob Grootendorst, who do not make use of the term *presumption* but have said things that are upon closer inspection directly relevant to the issue. With the – unfortunate – exception of Ullmann-Margalit and Walton, all these scholars are given their due in Hansen's paper.

The questions that Hansen attempts to answer in regard of presumptions are: (1) what are presumptions? (2) where do presumptions come from? and (3) how are presumptions (to be) substantiated? In the first part of this commentary I discuss Hansen's answer to these three questions. In the second part I shall react to Hansen's reconstruction of the pragma-dialectical view of presumptions.

Hansen's answer to his first question is that presumptions are *propositions with a presumptive status*; having a presumptive status means that the proposition *does not carry a burden of proof*. The latter part of this answer is the more informative, the first part the more interesting. The insight that presumptions are the counterparts of burdens of proof is, after all, one of the few insights which most contemporary argumentation theorists agree upon, but that having the status of presumption is not an intrinsic feature of a proposition is by no means commonly acknowledged. Most authors who mention presumptions in their writings suggest that a presumption is a particular *type* of proposition. This view is not only unfortunate because it is mistaken but also because it prevents the more interesting question of how presumptions acquire their presumptive status from being asked. Hansen's answer to this

second question is that presumptions gain their presumptive status because they are *the result of a presumptive inference*. In Hansen's analysis, a presumptive inference takes as its minor premise a particular circumstance or external consideration, symbolised as 'Ao,' and as its major premise a general "presumption-conferring rule" of the form ' $(\forall x)[(Ax) \supset \Gamma(Yx)]$ ' (Γ means that its scope is a presumption); its conclusion is a particular presumptive proposition ' $\Gamma(Io)$ '. Interestingly, Hansen's analysis more or less repeats the illuminating analysis of presumptions given by Ullmann-Margalit in her 1983 article 'On presumption.'¹ In this article, Ullmann-Margalit claims that propositions acquire a status of presumption because they are derived in an inference on the basis of a presumption rule which in her view amounts to the instruction: "given p , make q a premise in the rest of the pertinent piece of your practical reasoning" (1983: 148). Like Hansen, she observes that a 'pres q ' formula (the presumptive conclusion in Hansen's analysis) in effect presupposes a 'pres (P, Q)' formula: "if it is the case that, for some q , pres q , then there is a state of affairs represented by ' p ' such that both p and the appropriate presumption rule expressed by the formula 'pres (P, Q)' obtain." The similarities with Hansen's position will be clear. Hansen and Ullmann-Margalit apparently deviate, however, when Hansen, in discussing Kauffeld's speech act approach to presumptions, takes his own observation that presumptions are the result of an inference too literally. The latter becomes clear when he claims that Stanley's famous "Dr. Livingstone, I presume" entails "Dr. Livingstone, I infer." It is precisely in reference to this issue that Ullmann-Margalit warns her readers that "the conclusion of the rule of inference associated with presumption rules is to the effect *that a certain fact is presumed*. But this is not to be confused with an inference *to the presumed fact*" (1983: 148-149).² And indeed, "Dr. Livingstone, I presume" does not entail "Dr. Livingstone, I infer" – what it entails (also according to Hansen's own analysis) is "Dr. Livingstone, I presume, I infer," or something of the kind. In the latter phrase (as well as in Hansen's incomplete formulation), 'I infer' refers merely explicitly to the act of inferring the conclusion 'Dr. Livingstone [I presume]' from the presumption rule 'If I meet a white man with a beard in Africa, then, presumptively, this man will be Dr. Livingstone' combined with the minor premise 'I now meet a white man with a beard in Africa.'

Hansen's answer to his last question – how are presumptions (to be) substantiated? – is not so straightforward. This is not surprising, because this question is quite different from his first two questions: instead of pertaining to the structure of the major premise of a presumptive inference, the presumption-conferring inference rule, and the status of the conclusion of this inference, this question concerns the substance of the minor premise: the external circumstances or considerations that determine whether a certain presumption applies. I take it that on this issue Hansen takes sides with Rescher. Rescher thinks that the way in which presumptions are to be substantiated is the concern of 'rational' – or 'epistemic' – dialectic. Unlike 'conventional' dialectic, which has artificial rules for presumptions, rational dialectic is "unfettered by conventions." In rational dialectic "one must rely on the natural presumptions fixed by purely probative consideration of evidential and intrinsic plausibility" (Rescher 1977: 38). According to Rescher, then, a proposition has presumption when it is plausible, or at least more plausible than its rivals. A rule of this kind, Hansen remarks, "is general, it is in the service of rational dialectic, it is epistemic in character, and is natural rather than conventional."

The first remark I have here is that, obviously, Hansen's remark can only have an impact if one accepts the distinction between rational dialectic and conventional dialectic. Everyone, however, who thinks that an epistemological discussion is just as much as any other type of discussion subjected to institutionalised or semi-institutionalised rules and procedures, and involves starting points that are to a certain extent fixed – in the sense that not anything goes –, will be inclined to reject such a fundamental distinction between rational and

conventional dialectic from the start. In fact, such a person will say that dialectic is by definition conventional.

My second remark is that it looks as if both Hansen and Rescher – and also Whately – mistake the external, *domain-* or *disciplinary bound* considerations that determine how a presumption-conferring rule-structure will be substantiated in a particular domain or discipline for the general, conventional – or pragmatic – rationale that explains how these considerations can have an effect in the context concerned. As a consequence, Hansen claims primacy for epistemological considerations where no such claim is due: epistemology is just another field in which discussions take place. Although the considerations that are at stake in this field may be of influence on the substance of the presumption rules that are applied, the explanation of why and how this substantiation can have any force in these discussions is not at all epistemological. Technically speaking, Rescher's rule that the most plausible of the rival propositions has presumption is in fact not a *general* presumption-conferring rule, but merely a *particular* (substantiation of a) presumption-conferring rule. As such it is nothing more than an epistemic alternative to, for instance, Whately's attribution of presumption to existing institutions.

I now turn to Hansen's reconstruction of the pragma-dialectical view of presumptions. This reconstruction amounts to the observation that those working in the framework of the pragma-dialectical argumentation theory, notably van Eemeren and Houtlosser, reject presumptions. A simple correction is in order: van Eemeren and Houtlosser *do not* reject presumptions. They doubt whether Whately's attribution of presumption to the (social or legal) status quo (2002: 19) is useful, but they certainly do not reject the concept of presumption altogether. Their 2003 article 'A pragmatic view of the burden of proof,' proves in fact that they, too, think that "presumption" is a central concept in argumentation theory, which deserves a thorough analysis, which they subsequently try to provide. In sum, van Eemeren and Houtlosser conclude that the argumentative force of presumptions cannot be accounted for by referring to considerations applying to particular domains or disciplines, such as law or epistemology, but should be accounted for by referring to the general conventions and principles that guide the use of language in any type of communication and interaction: presumption rests with everything that is part of the pragmatic status quo, i.e., that is part of the list of commonly accepted premises which represents the interactional relationship between the parties.

I conclude my comments with a brief response to Hansen's conjecture that in the pragma-dialectical ideal model for critical discussion the material starting points that the discussion parties (have to) agree upon in the opening stage of the discussion can be conceived as presumptions. Indeed, although they are not labeled *presumptions*, these starting points – which could be regarded as mutual concessions – have precisely the function that Ullmann-Margalit attributes to presumptions: they enable discussants to conclude a discussion on an impending issue. But because this is at the same time their only function, in order to confer the status of presumption on these starting points there is no need to formulate an additional rule which states that 'If p is part of the common starting points, then presumptively p.' These starting points function as presumptions, with or without such a rule.

Notes

¹ *Journal of Philosophy*, Vol. 80, pp. 143-163. (Also referred to in Walton (1993) and van Eemeren and Houtlosser (2002).)

² In fact, Hansen stresses precisely the same point when he later says that “ Γp ’ is the form of a non-truth-functionally compound proposition – and hence Olsen’s innocence cannot be inferred from the presumption that he is innocent.”

References

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