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Marquard Freher and the presumption of goodness in legal humanism

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ABSTRACT



One of the most detailed early modern discussions of the morality of esteem can be found in the work of the reformed jurist and historian Marquard Freher (1565–1614). Since the question of how much esteem others deserve is fraught with a high degree of uncertainty, Freher relied on the work of other legal humanists, who discussed questions of esteem from the perspective of arguments from the presumption of goodness. The humanist approach to the presumption of goodness integrated considerations about presumed non-delinquency with considerations concerning natural needs, natural rights and natural duties grounded in natural rational capacities common to all (grown-up, healthy) human beings. It advised us to fulfill natural duties that derive from the natural need of being held in good esteem by others, and to develop socially valuable attitudes such as trust and positive emotions toward others. At the same time, this approach was responsive to considerations of prudence, both in grounding the presumption of goodness in considerations concerning causal powers and in balancing the presumption of goodness against a variety of presumptions of badness. Freher applied this understanding of the presumption of goodness to political practice in his role as an advisor to the Palatinate.

KEYWORDS

Esteem; reputation; glory

1. Introduction

The desire for esteem expresses one of the basic human needs, and probably there is no period in intellectual history where there was no theoretical reflection about the role of this desire in human life. Early modern natural law theories are no exception to this. Typically, however, the issue is discussed in texts primarily concerned with other issues, and often discussion of the morality of the desire for esteem takes the form of shorter passages and scattered remarks.¹ An exception to this is the work of the Reformed jurist and historian Marquard Freher (1565–1614). Freher graduated under the great legal humanist Jacques Cujas (1522–1590) in Bourges. After a few years as professor of law in Heidelberg, he became a judge, counsellor and diplomat in the service of the Palatinate and one of the pioneers in the historiography of medieval German law and literature.² Freher devoted two lengthy books to the legal aspects of esteem, reputation, glory and infamy: *Tractatus de fama publica* (1588; second edition 1591) and *Tractatus de existimatione acquirenda, conservanda et amittenda* (1591). Like many works of the legal humanists, these books give advice to legal practitioners (for instance, by giving procedural rules for assessing the reputation of witnesses) but also offer extremely detailed discussions of legal history and theoretical reflections concerning

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the natural-law foundations of aspects of legal practice. And as the dedications to the Duke of Bavaria, Johannes Casimir, and to Elector Friedrich IV show, Freher also had the hope that his work would help princes to develop the right attitude toward fulfilling duties of esteem in their personal and political relations.

While Freher's work as a historian has found some scholarly attention,³ his work on esteem and reputation has not yet been studied in any detail. Three reasons come to my mind why Freher's books deserve to be studied. First, when we try to assess the personal qualities of others, we are usually faced with a high degree of uncertainty. In early modern legal thought, the Roman-law concept of presumption fulfilled an indispensable function in dealing rationally with situations of decisions under uncertainty. In addition to presumptions that were laid down in law (the *praesumptio iuris et de iure* and the *praesumptio iuris*), the Roman-law tradition operated with presumptions that are formed by individuals and that concern the actions and qualities of individuals (the so-called *praesumptiones hominis*). While presumptions of the first type derive their validity from the law and were taken to be immune to contrary evidence, presumptions of the latter type were understood to be assumptions that are taken to be true until and unless contrary evidence makes it inevitable to revise them.⁴ Freher relied on the work of other sixteenth-century legal humanists such as Jacopo Menochio (1532–1607), André Tiraqueau (1488–1558), Andrea Alciato (1492–1550), Aimone Cravetta (1504–1569), and Nicolaus Everardus (1462–1532), who discussed questions of esteem from the perspective of arguments from *praesumptiones hominis*, in general, and of arguments from the presumption of goodness (*praesumptio bonitatis*), in particular. Freher's work can function as an insider's guide to sixteenth-century debates about how to form presumptions about the personal qualities of others, in general, and about how to argue from the presumption of goodness, in particular.

Another reason for studying Freher's views on these matters is that he discussed the ethical implications of the presumption of goodness much more explicitly than any other legal humanist. Although the group of sixteenth-century jurists just mentioned figures prominently in recent research concerning early modern historical scholarship⁵ and theories of juridical interpretation,⁶ and although early modern arguments from presumption have been studied in some detail,⁷ the question of how the relation between legal and ethical aspects of the presumption of goodness was understood by the legal humanists has, as far as I can determine, not been addressed in recent scholarly work. The neglect into which this facet of legal humanism has fallen is regrettable because the versions of natural law theory found in the legal humanists integrate aspects of legal theory with considerations concerning natural needs, natural rights and natural duties that we would now classify as belonging to ethics. Taking Freher's work as a point of departure makes clear that the presumption of goodness found in legal humanism did not reduce to the presumption of innocence; rather, it included the duty to presume that others possess ethically good qualities, until and unless contrary considerations force us to revise this presumption. This conception allowed to fulfil natural duties that derive from the natural need that we have for others' thinking well of our character traits, and to develop socially valuable attitudes such as trust and positive emotions toward others.

A third reason for studying Freher's work is that he shared with the legal humanists an acute awareness of the problem that the advantages that they presumption of ethical goodness may have for social relations may be cancelled out by prudential concerns. If we fulfil the natural need of others to be held in good esteem and if we trust them and like them without good reasons, we may have to pay a high price for our self-deception. The legal humanists answered these prudential concerns by grounding the presumption of goodness in presumptions concerning natural rational and emotional capacities common to all (grown-up, healthy) human beings, and also by counterbalancing the presumption of goodness with evidence-based presumptions of badness. Such prudential considerations were taken to be important not only in legal but also in political contexts. As we will see, in his role as counsellor, Freher himself used this strategy of balancing the presumption of goodness with a variety of presumptions of badness to support the political interests of the Palatinate.

I will proceed as follows: First, I will establish that Freher, like other legal humanists, invoked teleological considerations to distinguish the presumption of goodness from the presumption of innocence. Subsequently, I will argue that Freher, like other legal humanists, appealed to considerations concerning causal powers to answer prudential concerns raised by including ethical aspects into the juridical presumption of goodness. Finally, I will analyse how Freher, like other legal humanists, limited the presumption of goodness—both by restricting it to ordinary, non-excellent virtue and by balancing it with a variety of presumptions of ethical badness that are equally based on considerations concerning causal powers.

2. Teleology and the presumption of goodness

Freher's treatment of the duties of esteem is a useful starting point because it makes clear that the conception of goodness implied by Roman law included legal and ethical aspects. Freher referred to the definition given by the Roman jurist Callistratus according to which esteem is to be understood as 'the standing of undamaged dignity, approved by laws and customs, which by our delict is diminished or exhausted on the basis of the authority of laws.'⁸ As Freher explained, what matters here is 'standing with respect to dignity, according to which some are held to be honorable, suitable, legal, worthy of trust, above all suspicious and (as it is called) authentic; others are held to be notorious, suspect, infamous, shameful, and excluded from testimony; and the verdict about reputation is introduced partly through laws and the edicts of the magistrate, partly it depends on the habits and good customs of the individual localities.'⁹ Evidently, according to this definition laws and other legal documents play a role in determining dignity, but so do also other social conventions.

Accordingly, dignity does not reduce to non-delinquency. Rather, Freher understood dignity as 'the quality of a person, in virtue of which she deserves to be counted among the good and honorable citizens; in virtue of which she is thought to be capable of receiving offices and honors and suitable to carry out all actions of civil society, and on the contrary is thought to be unworthy of any resentment, as long as he cares about a moderate performance in office and keeps clear of all contagion with crime and shame, through which the purity and sincerity of his reputation can be hurt immediately.'¹⁰ Crime is thus one of the elements that destroys reputation, but so is behavior that, according to the conventions of a locality, give rise to shame. This is why non-delinquency is only one of the factors that grounds social esteem: 'This esteem of being a good person is acquired through integrity of customs, striving for virtue and innocence of living ...'¹¹ Freher also observed that the dimension of custom is built into how the Roman jurist Aemilius Papinianus spelled out the content of the presumption of goodness: 'Those acts that hurt our piety, esteem, and shame and that (if I may speak in general) happen against good customs, of these, too, it should not be believed that we are able to do so.'¹²

In addition to conformity with law and customs, virtue is a further factor constitutive of being held in good esteem. This can be seen in Freher's treatment of glory, which he took to be a form of esteem that is particularly widespread but has the same foundation as esteem.¹³ 'Since glory is to be sought only on the basis of true virtue, and this in such an order ... that we strive for virtue not out of the desire for praise but in order to deserve praise for virtue ...'¹⁴ With a view to princes, Freher held that striving for glory is essential for upholding power because it is essential for them to be perceived as virtuous persons; while 'through contempt for reputation, virtue is despised' (*contemptu famae contemni virtutes*).¹⁵ More generally, he noted that 'the affect relating to praise and glory ... was always believed to offer a perspicuous indication of character traits and minds that are able to strive for virtue ...'¹⁶ And, as he commented, 'since the love of glory contributes so much to triggering in mortals the cultivation and the study of virtue, the wise have consequently judged that glorious reputation and celebration must be the reward for excellent and accomplished virtue.'¹⁷

The presumption of goodness in the Roman-law tradition thus comprised three elements: (1) belief in non-delinquency, (2) belief in conformity to customs, and (3) belief in virtuous character

traits. The question, of course, is why one should presume that individuals exemplify all three varieties of goodness. Freher offers some teleological considerations: ‘I do not how nature itself brought it about in the minds of everyone that they give great weight to the opinions of others about themselves and that they direct a great part of their lives toward this opinion.’¹⁸ In this sense, it is a brute fact concerning human nature that social esteem is a source of happiness, more so than is self-esteem. But for the very reason that being held in good esteem is a natural need, Freher maintained, it is one of the needs that have to be taken into consideration in natural law:

Since most people think that it is of highest importance, what others, who are endowed with the same reason, who use the same laws and customs, and who live in the same community (with whom hence one necessarily has to have a lot of interaction and communication), think about them; the opinion has arisen among them that without any doubt good reputation and esteem has to be sought by everyone. This is why Cicero in book 1 of *De legibus*, where he discusses natural law, says that the mind of all humans have in common that that all desire pleasure and all flee death and pain; likewise, that, due to the similarity between what is honorable and glory, they judge those to be happy who are honored and miserable those who lack glory.¹⁹

Freher added that there is also instrumental value to social esteem. One dimension concerns trust: ‘The one is not said to be overly credulous who believes a person worthy of trust,’ a formulation that alludes to Baldus’s view that ‘to believe a good person is not acting against natural law.’²⁰ Another instrumental dimension of social esteem concerns positive emotions—a dimension that is brought out by Freher’s quotation from Cicero’s *De officiis*: ‘Because what it decent and honorable pleases by itself, moves the mind of humans by its nature and kind ... , we are forced by nature herself to like those in whom we believe these virtues to reside.’²¹

If ethical aspects are included in the juridical conception of goodness, then the presumption of goodness may be capable of fulfilling natural needs that the presumption of innocence could not fulfil. Still, saying that the more inclusive way of thinking about the presumption of goodness would fulfil some natural needs does not answer prudential concerns. Perhaps one could achieve these nice effects only at an exceedingly high price. If one is too optimistic about the virtuous character traits of others, one will often be disappointed—very much to one’s own detriment. Would it not be good advice to defer trusting and liking others until they have given some confirmation that they deserve to be trusted and liked? The answer that the legal humanists could give to these concerns is that their conception of the presumption of goodness was not only motivated by teleological considerations but also by assessments of causal powers. In this sense, the presumption of goodness is a special case of how presumptions, more generally, can be supported by causal considerations. The specific difference is that, while other presumptions are based on evidence concerning the qualities of particular individuals, the presumption of goodness was understood to be based on considerations concerning human nature.

3. Causal powers and the presumption of goodness

It will be useful to begin with an analysis of how evidence-based presumptions were treated by the legal humanists, on whose work Freher drew extensively. The general idea was brought into a succinct formula by Menochio: ‘Presumption and conjecture are derived from causal powers.’²² For instance, ‘we say that it is to be believed that the one died earlier who was weaker and more vulnerable ... Likewise, we say that the one is presumed to be the aggressor in a brawl who is bodily stronger than the other ...’²³ Menochio also mentioned virtues, vices, studies, education, arts and inertia as mental qualities the give rise to presumptions.²⁴ Evidently, these mental qualities can be inferred on the basis of evidence concerning particular individuals, and not every individual will exemplify these qualities in the same way.

Freher, too, used evidence-based presumptions of goodness side by side with the view that the presumption of goodness could be based on observations concerning human nature. As to the former pattern of argument, Freher quoted a passage from the Roman jurist Atrius Menander concerning the legal standing of a soldier returning from enemy territory:

If he had been esteemed to be a good soldier before, his assertion should be believed that he had been captured by the barbarians and that he did not desert: But if he had been one who exceeds his furlough, or negligent of those close to him, or sluggish, or acting outside his companionship, he is not to be believed when it happens that he returns after a long time.²⁵

Freher commented: '[O]n the ground of the previous life, we can estimate what we should judge about the subsequent conversation and how the deeds and words of humans are to be understood.'²⁶ To explain what allows forming presumptions based on evidence from previous times, he referred to André Tiraqueau's *De poenis*. There, Tiraqueau developed the point by giving attention to Virgil's portrayal of the relation between Dido and Aeneas:

In these matters [Dido] was turned from a temperate person (which is the disposition of virtue itself) into a self-controlled person, but not yet into a dissolute one. For Dido was at the beginning moved to love Aeneas both through virtue ... and through those factors that in human affairs are esteemed not only to be good but to be the highest goods. For who would not count the nobility of descent, the dignity and excellence of figure, and outstanding eloquence among the highest goods? Finally, when to so many austere enemies the persuasion of the flattering sister Anna were added, a more powerful appetite emerged and overwhelmed unwilling and resisting reason; and she became not only an intemperate but dissolute woman ...²⁷

As Tiraqueau explained, 'this story teaches us how many steps there are from the disposition toward virtues to the disposition toward vices; and how reluctantly and with how great difficulty we are diverted from the former to the latter ...'²⁸ Or to put it differently: 'Change of life of humans is not easy but takes place with labor of the soul.'²⁹ This is a thought that Freher took up:

What has become a habit is rarely corrected ... The only reason for this presumption is what Cicero says in *Pro Sulla*: '... and no-one of us can rapidly pretend or suddenly change his way of living or turn his nature upside down, no-one becomes suddenly the best, no-one becomes suddenly the worst.'³⁰

This consideration, of course, can be illustrated by particular examples; but applying it to new cases does not presuppose any new evidence concerning a particular individual. In this sense, even those presumptions of goodness or badness that invoke previous experiences with the personal qualities of particular individuals need to make use of a presumption against change that is based on an assumption that concerns human nature in general.

In fact, such general background assumptions play a crucial role in how presumptions are formed in the absence of evidence concerning the character traits of particular individuals. Menocchio put it as follows:

A presumption is derived from that nature of a person, of an action or of a thing. For ... it has to be presumed that each person and each thing and each action is according to its nature and as nature requires ... A presumption is derived from nature itself, as when each person is presumed to be good, and hence not ungrateful unless it is argued for and proved ... Contracts are presumed to be made according to their nature, that is, by someone who is mentally healthy. And hence the one who asserts that someone is furious and mentally impaired must prove it, for, according to nature, everyone is presumed to be mentally healthy ...³¹

Presumptions based on what belongs to human nature were ubiquitous in sixteenth-century legal discourse. One rule discussed by Alciato says that 'the quality that naturally is in human beings is presumed to be present always.'³² This rule is based on an understanding of what the natural qualities of humans are—for instance, an understanding of emotional states—as well as an understanding of qualities that are essential to human beings—such as sensation and natural reason.³³ To mention some of the examples that Alciato gave: Fathers are presumed to love their sons, and vice versa;³⁴ fathers are presumed to have more fear about their sons than about themselves;³⁵ brothers are not presumed to hate each other but 'rather it has verisimilitude that brothers like each other';³⁶ and 'sense and natural reason are presumed in each human being unless the contrary is proven.'³⁷ A similar pattern can be found in Alciato's example concerning the nature of aging persons:

Sexual desire is presumed to diminish in old age ... And generally, those qualities are presumed that are present according to the different ages: from whence an old person is presumed to die easily ... You could say that

old age properly speaking is not a disease; but once old age is proven, there results a *praesumptio juris* that this person is weakened ... Likewise, an old person is not as easily presumed to flee as a young person ...³⁸

Presumptions of this kind are grounded in the distinction between essential and accidental qualities. Alciato noted that, as to the thematic realm to which such revisable legal presumptions could be applied, two seemingly contradictory rules were often quoted. The first rule says that ‘a presumption relates only to the realm of the factual since only there, conjectures have their place.’³⁹ The second rule says that ‘regularly, facts are not presumed but have to be proven.’⁴⁰ As Alciato explained, the second rule holds especially for accidental facts—those that do not derive from the essence of things—because ‘extrinsic accidents are not presumed.’⁴¹ There is no contradiction between the two rules because the second rule is not applicable to cases ‘in which facts are presumed on the basis of a previously existing cause.’ In such cases, ‘always once something certain is presupposed, the presumption follows from thence. But we call the presuppositions signs; for as arguments have their seats or places from where they arise ... , so also do presumptions arise from certain places ...’⁴²

But not all presumptions require evidence concerning individual cases. Alciato’s treatment of the rule that tells us that ‘change is not to be presumed’ illustrates this point.⁴³ As Alciato clarified, this rule is based on an ontological analysis of the nature of change: ‘[T]he rationale of this rule is that changing means that something happens accidentally; and accidents are not presumed ...’⁴⁴ What he had in mind is the distinction between intrinsic accidents (which can be presumed because they arise from the essence of a thing) and extrinsic accidents (which cannot be presumed because they arise from an event that is external to the essence of the thing). For instance, he contrasted the insight that ‘extrinsic accidents are not presumed’⁴⁵ with the insight that someone who was poor in the past is not to be presumed poor now because everyone is presumed to strive to become wealthier.⁴⁶ Here, the striving for material well-being seems to be understood as one of the natural qualities that are presumed to be present in every person.

What about the possibility of forming presumptions concerning personal qualities without evidence concerning particular individuals? Freher described this possibility as follows: ‘Unless esteem is contaminated or deleted through some delict, it always persists and always inheres; in such a way that it is always presumed in favor of good reputation, probity and innocence; because this is convenient for, friendly to and in agreement with nature.’⁴⁷ One of the arguments developed by Freher concerns the professional duties of merchants. He ascribed to Baldus the view that ‘[o]ne has to rely on the books of merchants more than on those of others, for the very reason that merchants are persons of more proven faith and reputation and more committed to the law than others.’⁴⁸ As Freher commented, ‘this reason seems to be founded in what should happen than in what happens.’⁴⁹ In fact, this seems to correspond closely to Baldus’s treatment of the question of when one should rely on the balance books of merchants. Consider cases where these books contain contradictory entries, for example when a merchant in one entry writes that he has received a sum connected with a certain transaction and in a subsequent entry that he expects to receive the same sum. Baldus gave the following assessment:

In this case, the task and equity of the one who judges demand circumspection. For when the merchant is noble and trustworthy, and the quantity small, one should believe his record, otherwise the business relation would be fraudulent and the duty to keep a balance book (to which he is obliged due to the necessity to give an account) would be most dangerous for him. Also, because he wrote this book as if out of a tacit mandate and out of the necessity of his duty, in particular when he himself has given an oath that he will practice his art faithfully ...⁵⁰

Baldus’s claim seems to be that one should presume that the second entry in the balance book should be understood to be a correction of the first entry, otherwise one would ascribe a fraudulent intention to the merchant; and ascribing such an intention would be contrary to the duties that come naturally with his chosen profession. At the same time, Baldus limited the weight of such

a presumption: As soon as the sum is big enough to constitute a substantial damage to the other party, arguing from presumptions is not enough but requires evidence-based arguments.

The presumption in favour of the faithfulness of a merchant thus arises from the assumption that merchant will understand the ethical demands arising from the nature of his chosen profession. In this context, Freher also referred to Tiraqueau, who made the reasoning relating to merchants more explicit. As the French humanist expressed it, ‘in merchants ... most extensive trust is required. But it is not as if trust abounds in them; rather, it is much smaller and, if I may say, more sterile than in others, because they are dedicated to ruses, frauds, lies, perjuries more than all others ...’⁵¹ In this sense, Tiraqueau did not regard trust in the personal qualities of merchants to derive from a generalization based on what happens most frequently. Rather, he distinguished between the personal qualities of merchants and the ethical demands that derive from the nature of trade relations. As to the vices of merchants, Tiraqueau held that ‘they belong not to the art but to persons ... For even if in most cases those exert the art make an admixture of ruses, lies, frauds and perjuries: The art itself is far away from them. And it does not have anything in common with them, if humans wanted to use it rightly.’⁵² As he explained the normative side of his argument, ‘the houses of merchants must be houses of truth and equity, especially because one has commonly recourse to trusting them.’⁵³ Hence, because trade can be carried on only if the customers trust in merchants, and because usually customers show such trust, merchants have a duty to be trustworthy and equitable. Something analogous holds for the role of trust and equity in the relations between merchants: Contracts are ‘formed between merchants, among whom, for the most part, there is the custom of judging according to what is good and equitable, and not according to the rigor of the law.’⁵⁴ This is why good faith and a commitment to equity is required from those who engage in trade.

Going one step further, Freher argued that something analogous holds for the assumption that (healthy, grown-up) person will understand the demands of natural law. As one of the sources of the idea that the presumption in favour of good reputation agrees with nature, Freher mentioned Aimone de Cravetta (1504-1569).⁵⁵ Take Cravetta’s discussion of a case where the captain of an old vessel refuses to transport some heavy goods in stormy weather. The discussion began with a presumption based on an assumption concerning a natural quality: ‘The desire for money, without which we cannot live, is natural to all humans; therefore, absence of bad faith should be presumed in someone whose act does not result in any pleasurable result for the agent.’⁵⁶ This is why it should be presumed that the captain’s refusal has been motivated by the intention to avoid shipwreck. Cravetta used the concept of verisimilitude to express this thought: ‘Because this cause possesses verisimilitude, it should be presumed ... When something possesses verisimilitude, it is said to be in accordance with natural law, because verisimilitude is said to be cognate to nature.’⁵⁷ Here, one encounters a characterization of ‘being cognate to nature’ as what is in accordance with natural law. Moreover, accordance with natural law is understood as a criterion for the rationality of a presumption. Freher’s reference to Cravetta is informative because it indicates how the presumption of goodness can be understood as an instance of arguing from verisimilitude: Persons should be presumed to recognize what is naturally good for them. This sense of verisimilitude understood as what is in agreement with the demands of natural law⁵⁸ seems also to be at stake when Freher wrote: ‘The verisimilitude of the thing usually recommends good reputation if the reputation concerns those things that are in agreement with nature, such as the probity and innocence of someone, in favor of which one should form a presumption ...’⁵⁹

Alciato, too, held that claims concerning what we should presume because it corresponds to the nature of a thing are not restricted to matters of fact but also can reflect demands of natural law. Among the presumptions concerning the presence of a natural quality, Alciato mentioned the presumption that a member of an older generation wants to leave his estate to his descendants, because a legitimate part of the estate is owed to descendants by natural law.⁶⁰ Thereby, Alciato connected an aspect of inheritance law that is highly relevant for cases where someone passes away without having made a last will with a level of natural law that the Roman jurists regarded as being common to humans and other animals—the demands of caring for offspring without which the survival and

well-being of a biological species cannot be secured.⁶¹ Hence, these are duties that are understood as arising from the natural constitution of biological beings of our kind. Placing this presumption in the context of the rule that recommends grounding presumptions on natural qualities thus is a consequence of the idea that the demands of natural law are understood as being grounded in natural qualities. From this perspective, it is not surprising to see that Alciato understood the presumption of goodness to be grounded in assumptions concerning natural duties. With respect to the one who profits from the presumption of goodness, he held that ‘because he has to be good, he deserves to be presumed to be such ...’⁶² And since presuming the goodness of another is itself a natural duty, there is a justified presumption that this duty will be fulfilled: ‘everyone is not only presumed to be good but also presumed to be held in good esteem and reputation.’⁶³

4. Balancing the presumption of goodness against presumptions of badness

Forming the presumption of goodness, for the legal humanists, thus was not only guided by their respect for the natural needs of others but also by their view that the rationality of presumptions derives from their verisimilitude. But the answer that the legal humanists found to prudential concerns had further aspects, and these aspects, like the assessment of verisimilitude, derive from considerations concerning causal powers.

One line of thought limited the presumption of goodness by restricting the degree of ethical goodness that should be presumed. Immediately after the passages mentioned by Freher, Tiraqueau cautioned that the presumption in favour of the good qualities of members of particular professions does not involve the ascription of anything like ethical perfection. Rather, he believed that, while considerations concerning human nature speak in favour of that normal goodness required to fulfil professional roles, such considerations also speak against presuming excellent ethical qualities in others. The reason he gave derives from an assumption concerning the role of self-love:

It seems to be rather absurd and in no way safe for someone to be a judge in his own case, no matter how decent and good a person he may be; for in almost everyone, self-love is so ingrained ... that you will not find anyone so decent, so modest, so attentive, so sharp-eyed that he would not, in estimating and inspecting his own cause, become blind, dizzy, half-awake, wavering, dull, and delirious by the propensity of his mind.⁶⁴

Here, everyday observations about the effects of self-love provide the basis for forming the presumption that no-one is a good judge in his own affairs. This presumption is not based on observations concerning the character traits of a particular individual; rather, it is a presumption based on an assumption concerning human nature in general. Similarly, Freher emphasized that ‘no-one is presumed to be good in the most excellent degree.’⁶⁵ Also, he held that when someone ‘alleges his goodness or good reputation as the foundation of his intention, then it must necessarily be proven ...’⁶⁶ Likewise, he argued that when the law requires witnesses to have a good reputation, it has to be proven whether these requirements are fulfilled, otherwise the law would be superfluous.⁶⁷ In the view of the legal humanists, the presumption of goodness thus did not amount to a presumption of ethical excellence. Rather, it amounted to the presumption that individuals will respect law and custom, and that they will develop a moderate degree of ethical goodness. In this sense, the presumption of goodness did not involve some imprudently high expectations.

Placing the presumption of goodness in the context of a variety of presumptions of badness was a further strategy to fulfil the demands of prudence. The presumption of goodness was not only understood to be defeasible by something as strong as contrary evidence but also by something as weak as contrary presumptions. And as in the case of other presumptions, these presumptions were understood to be motivated by considerations concerning causal powers. Recall the case of the soldier returning from the barbarians, where the presumption against the change of character traits allows forming a presumption against someone who has been held to be an unreliable soldier in the past.⁶⁸ Alciato discussed a similar case, where the inability to take good care of oneself can give rise to a presumption against the ability to take good care of others:

Everyone is presumed to care about his own affairs before caring about the affairs of others ... This is why it is presumed that someone who dares to treat himself badly will commit worse things against others. And note this against those who accept administrators or overseers who have consumed their own goods: Because they will consume the good of others more easily ... And this is confirmed by the consideration that he who failed to provide advice in his own affairs is even more presumed to fail to provide advice in the affairs of others.⁶⁹

As in the cases of evidence-based presumptions of goodness, such presumptions are based on a combination of observations concerning particular individuals and assumptions concerning human nature. This gives the legal humanists' conception of how both presumptions of goodness and presumptions of badness are formed a high degree of internal coherence and explains why the same argumentative foundations that lead to evidence-based presumptions of goodness also allow revision of these presumptions. Both evidence-based presumptions of goodness and presumptions of badness thus involve the presumption against change.

But, as Menochio pointed out, the presumption against change does not apply indiscriminately:

[I]t does not apply when things are variable through the passage of time, out of either the necessity of nature, or verisimilitude, or quality of acting. As when we say that the one who was once a child is not presumed to be one now ... Likewise, we say out of verisimilitude that the one who did not know letters in childhood is not presumed not to know them now, since it has verisimilitude that humans can learn daily ... Likewise, out of the quality of acting we say that it is not presumed that the one who stabbed someone in the past will also stab someone today ...⁷⁰

In this way, assumptions concerning human nature can also ground presumptions in favour of change. And this example makes it clear that even the presumption of badness to which a former crime gives rise can be overturned by the passage of time in cases where assumptions about human nature tell us that emotions that have prompted the misdemeanour are by their nature transitory.

The interplay between the presumption of goodness that could be overturned by more specific presumptions of badness, which again could be overturned by equally specific presumptions of goodness, is also highly relevant for Freher's political activity as a counsellor for the Palatinate. The constitutional situation of the Palatinate at the end of the sixteenth century was controversial because large parts of the territory (*Oberpfalz* and *Rheinpfalz*) had fallen under the dominion of the dukes of Bavaria. While the Bavarian side argued that electoral rights should be regarded as territorial rights, Freher and his colleague at the University of Heidelberg, Denis Godefroy (1549–1622), argued that electoral rights should be regarded as personal rights unaffected by territorial losses.⁷¹ One element of their case for the personal nature of electoral rights was their justification of the validity of testamentary provisions about tutelage for the first-born heirs who have not yet reached adulthood. Both the *Bulla aurea* of Emperor Charles IV (1356) the *Bulla aurea Sigismundi* (1434), two of the fundamental laws of the German Empire, unambiguously conceded to the Electors the right to confer in their last wills tutelage for their underage heirs upon some of their agnates (that is, their male relatives who descend from a common male ancestor).⁷² As Freher explained, this right was understood to be crucial for securing the electoral dignity for their first-born son (in the concrete case, Friedrich IV, who was under the tutelage of his uncle Johann Casimir until 1592).⁷³

By including legal questions arising from tutelage, arguments from presumption became highly pertinent for the controversy about the nature of electoral rights. Alciato discussed a bundle of presumptions relevant for tutelage as one of the applications of the rule that advises us to presume natural qualities to be present. Most importantly, he took this rule to imply that, due to vulnerability of minors, there cannot be a presumption of goodness in favour of the tutor:

'In a minor ignorance is presumed ... And for this reason, a minor is presumed to be deceived easily.'⁷⁴ This is why the burden of proof lies on the side of the tutor: 'From this it is inferred that a minor who takes out a loan from a lender is presumed to have been injured, unless it is proven that he has become wealthier ... Also, a sale that injures a pupil is presumed to have been made on the basis of a fabricated lie.'⁷⁵ Likewise, Menochio observed that a tutor who has neglected the duty of having the goods belonging to the pupil registered in an inventory cannot invoke any presumption in his own favour.⁷⁶ There was even a *praesumptio iuris et de iure* against the tutor that goods

included in the inventory cannot be goods belonging to the tutor. As Menochio argued, ‘it does not correspond to natural reason, nor does it have in any way verisimilitude, that tutors ... accept that in making the inventory of the goods of a pupil ... their own goods be described among the goods of the pupil ...’⁷⁷

These are example of how the presumption of goodness can be overruled by presumptions of badness based on considerations concerning causal propensities. The case of tutelage, however, is interesting because it also provides examples of how presumptions of badness can be overruled by specific presumptions of goodness. For instance, Menochio noted that ‘the opinion of interpreters is commonly accepted and true that it is permitted to a tutor to contract with his pupil publicly, but not secretly ... because by contracting publicly the suspicion of fraud ceases ...’⁷⁸ As he explained, ‘publicly’ can mean something like ‘in the presence of a co-tutor’, or ‘in the presence of a well-informed judge’, or ‘in the presence of friends and relatives.’⁷⁹ Alciato, too, held that ‘it is presumed that blood relatives and family members will not fail to defend their own relative ... From which it follows that someone is not presumed to be devoid of defense when he gives rise to some verisimilitude that at least his relatives or friends will defend him ...’⁸⁰ For this reason, ‘someone who contracted through the intervention of family members and blood relatives is not presumed to have contracted out of fear ...’⁸¹ And for the same reason, Alciato argued, relatives should be chosen with priority as tutors.⁸²

Analogous considerations shaped the defense of the personal nature of electoral rights. As to the question of whether the electors’ right of making testamentary provisions concerning tutelage has been used in a legitimate way, Godefroy argued that the deceased Elector (Ludwig VI) had sought the advice of friends, legal experts and German and foreign rulers. In Godefroy’s view, this process of consultation created a presumption in favour of the person nominated as tutor: ‘Suspect tutors and curators are to be rejected through the advice or intervention of such persons; hence, once it has been proven that one has decided and acted on the basis of their advice, it has to be presumed that decision has been reached in good faith and without deception.’⁸³ One of the reasons for why the suspicion of fraud can be overcome through a process of consultation invoked emotional factors relevant not only the question at hand: ‘In other cases, due to friendship, princes are never presumed to transgress rights because they can assist the one for whom they have an affection in a different way, which allows them to gain both securer gratitude and truer glory.’⁸⁴ Thus, assumption about emotions toward friends and assumptions about expectations concerning gratitude and social esteem belong to the causal propensities that make presumptions in favour of those giving advice rational.

Freher justified the constitutional rule given by Emperor Sigismund in a similar way. According to Freher, Sigismund preferred tutelage by close relatives over tutelage by foreigners or more remote relatives for a good reason:

This is so either because of the presumed faithfulness and affection of agnates, or also because this is what is owed to the honor, connection and necessity of blood relations. And in their family, the members of the Palatinate have fulfilled this demand of the situation since ancient times, and never admitted foreigners or even relatives of a more remote degree at the cost of the envy of and contempt for the closer relatives ...⁸⁵

The presumption in favour of the goodness of tutors chosen in accordance with the *Bulla aurea Sigismundi* thus is grounded on assumptions concerning the emotions that tend to be present in close relatives and on the assumption that they will have desire to act as tutors because this fulfils a widely shared norm of what honourable action consist in.

5. Conclusion

By now it should be clear that the conception of the presumption of goodness that Freher derived from the legal humanists offered an answer to how we could develop social emotions that fulfil the natural need for being esteemed (not only for non-delinquency), and also an answer to prudential concerns by grounding the presumption of goodness in considerations concerning causal powers.

What the rules specified by the legal humanists have in common is that they rely on considerations concerning the nature of persons and their acts. Forming the presumption of goodness is an instance of forming presumptions on the basis of what happens most easily, given our background assumptions concerning human nature. This is why the presumption of goodness can be counter-balanced by presumptions of badness that likewise make use of assumptions concerning the causal powers of mental states. And presumptions of badness, in turn, can be counter-balanced by presumptions of goodness that arise from considerations concerning the causal powers of other mental states. Including ethical aspects into the juridical conception of the presumption of goodness thus did not lead to a naïve and potentially dangerous form of trust; rather, it opened up the possibility of dealing rationally with situations of uncertainty about the personal qualities of others. And this is why the strategy of balancing presumptions of goodness and presumptions of badness turned out to be a powerful tool not only for juridical but also for political argumentation.

Notes

1. On the desire for esteem in early modern natural law theories, see Blank, “Besold on Confederation Rights and Duties of Esteem;” Blank, “Pufendorf and Leibniz on Duties of Esteem.”
2. On Freher’s biography, see Fuchs, “Freher, Marquard;” Adam, *Vitae Germanorum Jureconsultorum et Politicorum*, 473-479; Brucker, *Ehren-tempel der Deutschen Gelehrsamkeit*, 106-110; Kornexl, *Studien zu Marquard Freher*.
3. On Freher’s editions of medieval sources, see Kühlmann, *Die deutschen Humanisten*.
4. On the types of presumption, see Alciato, *De praesumptionibus*, 15-33.
5. See Kelley, *Foundations of Historical Scholarship*; Plessis, *Reassessing Legal Humanism*.
6. See Sbriccoli, *L’interpretazione dello statuto*; Massironi, *Nell’officina dell’interprete*; Maclean, *Meaning and Interpretation in the Renaissance*; Monheit, “Guillaume Budé, Andrea Alciato, Pierre de l’Étoile,” 27-31; Kriechbaum, “Verba und mens in den Interpretationslehren des Humanismus,” 47-56; Méniel, “La sémantique d’un juriste.”
7. See Gaskins, *Burdens of Proof in Modern Discourse*; Guiliani, “Civilian Treatises on Presumption;” Blank, *Arguing from Presumptions*.
8. Freher, *Existimatio*, 9: “Definitur ... a Callistrato existimatio, dignitatis illaesa status, legibus ac moribus comprobatus, qui ex delicto nostro autoritate legum minuitur aut consumitur” (*Dig.* 50.13.5).
9. Freher, *Existimatio*, 9-10: “[Status] dignitatis, quo alii honesti, idonei, legales, fide digni, exceptione maiores, & (ut vocant) authentici; alii notati, suspecti, infames, turpesque & intestabiles habentur: quae famae censura partim a legibus & edictis magistratuum introducta est, partim a consuetudine & bonis moribus singulorum locorum dependet.”
10. *Ibid.*, 10: “eam hominis qualitatem, qua in numero bonorum virorum & honestorum civium censi meretur; qua capax munerum & honorum, & ad omnes actus civilis societatis gerendos idoneus, rursumque iniuria & quavis obtreccatione indignus reputatur, quandiu officii mediocritatem tuetur, omnique sceleris & flagitii contagio vacat, quo famae suae puritas & synceritas statim laedi posset.”
11. *Ibid.*: “Haec autem existimatio viri boni ut morum integritate, virtutis studio, vitaeque innocentia acquiritur ...” On the concept of being a good person, see Welti, “‘Vir bonus’/ ‘homo bonus’/ ‘preudhomme.’”
12. Freher, *Existimatio*, 84, citing Papinianus, *Dig.* 28.7.15: “Quae facta laedunt pietatem, existimationem, veredundiam nostram, & (ut generaliter dixerim) contra bonos mores fiunt, ea nec facere nos posse credendum est.”
13. Freher, *Existimatio*, 18.
14. *Ibid.*, 69: “Cum enim gloria non nisi ex vera virtute petenda sit, idque eo ordine ... ut non laudis studio virtutem affectemus, sed ex virtute laudem mereamur ...”
15. *Ibid.*, 88.
16. *Ibid.*, 38: “Sane hunc laudis & gloriae affectum, ut a natura animis insitus est; ita praeclarae indolis animique ad virtutis studium apti significationem non obscuram praebere, semper creditum est ...”
17. *Ibid.*, 44-45: “Cum itaque ad virtutis culturam & studium apud mortales excitandum tantum gloriae amor possit, consequenter est a sapientibus iudicatum, excellentis & consummatae virtutis praemium, gloriosam famam & celebrationem esse debere.”
18. *Ibid.*, 14: “[N]escio quo modo in omnium animis ab ipsa natura [comparatum est, ut aliorum de se opinionem magni pendant, & ad eam se magna ex vitae parte component.”
19. *Ibid.*, 14-15: “Cum itaque plurimum referre plerique homines putarent, quid de ipsis alii homines eadem ratione praediti, iisdemque legibus & moribus utentes, & in eadem civitate constituti (quibuscum ideo necessario plurimum consuetudinis & commercii habendum esset) sentirent; nata est inter illos haec opinio, ut non

- dubitent, bonam famam & existimationem esse cuiuslibet expetendam. Unde Tullius lib. 1. *De legibus* ubi de iure naturae disserit, in hoc omnium hominum ingeniis convenire ait, quod & voluptate capiantur omnes, & mortem doloremque fugiant; itemque quod propter honestatis & gloriae similitudinem beatos, qui honorati sunt, iudicent; miseros autem, qui inglorii.” See Cicero, *De legibus*, 1.32.
20. Ibid., 116: “Non dicitur nimium credulus, qui credit homini fide digno ... credere bono viro non est facere contra ius naturale” (see Baldus, *Consiliorum ... volumen primum*, 144).
 21. Freher, *Existimatio*, 114, citing Cicero, *De officiis*, 2.9.32: “Etenim illud ipsum quod decorum honestumque est, quia per se nobis placet, animosque hominum natura & specie sua commovet ... : idcirco eos in quibus illas virtutes esse remur, a natura ipsa diligere cogimur.”
 22. Menochio, *De praesumptionibus*, 1: 20: “A viribus praesumptio atque coniectura desumitur.”
 23. Ibid.: “dicimus eum prius decessisse credi, qui debilior imbecilliorque erat ... Ita dicimus quod is praesumitur aggressor in rixa qui altero corpore fortior est ... ”
 24. Ibid.: “Bona animi, a quibus persaepe etiam coniectura ducitur, haec sunt, virtutes, vitia, studia, educatio, artes, inertia.”
 25. Freher, *Existimatio*, 156, citing *Dig.* 49.16.5.6: “Si bonus miles ante existimatus fuit, credendum affirmationi eius, quod se captum a barbaris fuisse dicat; non transfugisse: Si vero emansor fuerit, aut negligens suorum, aut segnis, aut extra contubernium agens, non esse credendum, si forte post multum temporis revertatur.”
 26. Ibid.: “Ex quo textu fundata est nobilis illa praesumptio, quod qui ante fuit bonus, & nunc sit bonus. Quia ex transactae vitae ratione aestimari potest, quid de sequenti conversatione iudicemus, & quomodo facta dictaque hominum sint accipienda.”
 27. Tiraqueau, *De poenis*, 215: “In quibus quidem ex temperata (qui est ipsius virtutis habitus) continens duntaxat effecta est, nondum autem incontinens. Mota enim fuit ... a principio Dido, ut Aeneam amet, tum virtute, quam unam in vita contemplatione dedita intuemur, tum & his quae humanis coetibus non solum bona, sed & summa bona existimabantur. Quis enim generis nobilitatem, quis formae dignitatem, atque excellentiam, quis denique multo ornatu insignem orationem inter summa non adnumeret? Tandem vero cum ad tot acerrimos hostes, blandae sororis Annae persuasiones accessissent, superior evasit appetitus, & rationem quanvis invitam & reluctantem traxit: factaque est demum mulier non prorsus intemperans, sed incontinens ... ”
 28. Ibid., 215: “Quibus quidem monemur, quam multi sint a virtutum habitu ad habitum vitiorum gradus: quamque aegre, & cum magna difficultate ab illis ad ista divertimus ... ”
 29. Ibid., 263: “Non facilis est vitae hominum mutatio, sed cum animae fit labore.”
 30. Freher, *Existimatio*, 160: “[R]aro corrigitur, quod venit in consuetudinem ... Cuius praesumptionis haec sola est ratio quod Tullius *Pro Sulla* ait: ‘ ... neque enim potest quisquam nostrorum subito fingi, neque cuiusquam vita repente mutari aut natura converti, nemo repente fit summus, nemo repente turpissimus.’” See Cicero, *Pro Sulla*, 25.69.
 31. Menochio, *De praesumptionibus*, 1: 23: “sumitur praesumptio ex natura personae, actus vel rei. Nam ... praesumendum est, quod quaelibet persona & quaelibet res, & quilibet actus sit secundum suam naturam sicut eius requirit natura ... Sumitur praesumptio ex ipsa natura, ut quilibet bonus esse praesumatur, atque ita non ingratus nisi arguatur & probetur ... Codicillos praesumi factos secundam suam naturam, idest ab eo qui sanae mentis est. Et ideo qui asserit aliquem esse furiosum & mentecaptum probare id debet, cum secundum naturam quilibet praesumatur sanae mentis ... ”
 32. Alciato, *De praesumptionibus*, 34: “qualitas quae naturaliter inest homini, semper adesse praesumitur.”
 33. Ibid., 108: “Sensus & ratio naturalis praesumuntur in quolibet homine, nisi probetur contrarium ... Probatur autem quis fuiosus per signa extrinseca, puta quia loquitur verba more furiosorum.”
 34. Ibid., 34.
 35. Ibid.
 36. Ibid., 69: “imo est verisimile quod alter alterum diligat.”
 37. Ibid., 108: “Sensus & ratio naturalis praesumuntur in quolibet homine, nisi probetur contrarium.”
 38. Ibid., 142: “praesumitur libido diminuere in senectute ... Et generaliter, secundum aetates praesumuntur ea quae naturaliter insunt: unde senex praesumitur de facili moriturus ... Potes dicere, quod senectus proprie loquendo non sit morbus: sed probata senectute, resultat praesumptio iuris, quod sit aeger ... Item senex non ita de facili praesumitur fugiturus sicut iuvenis ... ”
 39. Ibid., 30.
 40. Ibid.
 41. Ibid., 32.
 42. Ibid., 33.
 43. Ibid., 143.
 44. Ibid.
 45. Ibid., 214.
 46. Ibid.

47. Freher, *Existimatio*, 11: “nisi aliquo delicto existimatio contaminetur vel deleatur, semper durat, semper inest; adeo ut pro bona fama, probitate, & innocentia usque praesumatur; quia naturae conveniens, amica, & consentanea est ...”
48. *Ibid.*, 144: “propter hoc ipsum stari codicibus mercatorum potius quam aliorum, quod mercatores sint homines probatoris fidei & famae & legaliores quam caeteri.”
49. Freher, *Existimatio*, 144: “Quae quidem ratio fundata videtur magis in eo quod fieri debebat, quam quod fit.”
50. Baldus, *In VII. VIII. IX X. & XI. partem Codicis commentaria*, fol. 86 recto: “[T]unc officium, & aequitas iudicantis debet esse circumspecta. Nam quando mercator est nobilis, & fide digna persona, & quantitas parva, credendum est suae scripturae, alioquin societas esset captiosa, & officium scibendi codicem rationum (ad quod de necessitate reddendarum rationum tenetur) esset ei periculosissimum. Item quia hanc scripturam facit quasi ex tacito mandato, & de necessitate officii sui, praesertim cum ipse iuraverit artem suam fideliter exercere ...”
51. Tiraqueau, *De poenis*, 259: “In mercatoribus ... fides exuberantissima requiritur. Sed tantum abest, ut is eis fides exuberet, ut in eis sit multo minor, & ut sic loquar, sterilior, quam in caeteris: quippe cum dolis, fraudibus, mendaciis, periuriis sint ante omnes dediti ...”
52. Tiraqueau, *De nobilitate*, fol. 212v: “Nec mercaturae laudibus affert praedudicium quod de mercatorum vitiis dictum sit. Non enim artis sunt ista, sed hominum ... Nam etsi plerique eam artem exercentes, dolos, mendacia, fradues, periuria admiscunt: Ars tamen ipsa longe ab iis distat. Neque quicquam cum iis habet commune, si ea recte uti velint homines.”
53. Tiraqueau, *De poenis*, 258: “domus mercatorum debet esse domus veritatis, & aequitatis, ob id possum, quod ad fidem eorum communiter confugitur.”
54. *Ibid.*: “cum sunt inter mercatores initas inter quos ut plurimum iudicari solet ex bono & aequo, & non de rigore.”
55. Freher, *Fama*, 206.
56. Cravetta, *Consilia*, 1: 64.
57. *Ibid.*
58. On this sense of verisimilitude in sixteenth-century legal theory, see Blank, “Common Usage.”
59. Freher, *Fama*, 115: “ipsa verisimilitudo rei famam magnopere commendare solet, si fama sit de his, quae sunt naturae consentanea, veluti de probitate & innocentia alicuius, pro qua praesumendum est ...”
60. Alciato, *De praesumptionibus*, 45.
61. See Scattola, *Das Naturrecht vor dem Naturrecht*, 58-59.
62. Alciato, *De praesumptionibus*, 245: “unde cum debeat esse bonus, merito debet etiam praesumi ...”
63. *Ibid.*, 247: “quilibet non solum praesumitur bonus, sed etiam praesumitur bonae existimationis & famae.”
64. *Ibid.*, 236: “Satis absurdum videri & minime tutum, quempiam quantumlibet probum ac bonum virum, iudicem esse in sua, aut suorum causa: cum omnibus usque adeo insita sit illa philautia ... , ut neminem tam probum, tam modestum, tam attentum, tam oculatum invenias, qui in sua causa aestimanda, at introspicienda quadam animi propensione corruptus caecutiatur, calliget, lippiat, fluctuet, hebetescat, deliret.”
65. Freher, *Fama*, 135.
66. *Ibid.*, 201: “Quando tamen bonitatem seu bonam famam pro suae intentionis fundamento allegat, tunc illa ei necessario probanda est ...”
67. *Ibid.*, 135.
68. See above, note 25.
69. Alciato, *De praesumptionibus*, 140-141: “Quilibet praesumitur prius res curare proprias, quam alienas ... Ubi praesumitur peius in alium committere, qui in seipsum malum audet. Et ista nota contra eos, qui accipiunt factores seu institores qui consumpserunt propria bona: quia facilius consument aliena ... Et pro hoc etiam facit, quia qui suis in rebus consilio indiget, multo magis praesumitur in alienis rebus indigere.”
70. Menochio, *De praesumptionibus*, 1: 28: “Declaratur hic casus ut non procedat, quando res sunt variables ipso temporis cursu, vel ex ipsius naturae necessitate, vel verisimilitudine, vel agendi qualitate. Sicuti dicimus, quod ille, qui olim fuit infans non praesumitur etiam hodie infans ... Ita quoque ex verisimilitudine dicimus, quod ille qui a pueritia nescivit litteras, non praesumitur hodie nescire, cum verisimile sit hominem quotidie discere posse ... Ita ex qualitate agendi dicimus, non praesumi, quod ille, qui olim percussit, etiam hodie percutiat ...”
71. For detailed analysis of the legal and political situation of the Palatinate around 1600, see Messinger, *Die Übertragung der pfälzischen Kurwürde auf das Herzogtum Bayern*.
72. The relevant passage from the *Bulla aurea* is reproduced in Freher, *De legitima tutela*, sig. ****recto-verso; the full text of the *Bulla aurea Sigismundi* is reproduced in Freher, *Assertio*, sig. I3verso-K2verso.
73. Freher, *Assertio*, 63.
74. Alciato, *De praesumptionibus*, 112: “In minore praesumitur ignorantia ... Et propterea talis praesumitur de facili circumscribi.”
75. *Ibid.*: “inde infertur, quod minor contrahens mutuum cum foeneratore, praesumitur laesus, nisi probetur factus locupletior ... [E]tiam venditio quae pupillum laedit, praesumitur commento mendacio facta.”
76. Menochio, *De praesumptionibus*, 2: 314.

77. Ibid., 2: 858: “nec rationi conveniat naturali, nec aliquo modo verisimile sit, ut tutores ... in confectione inuentarii bonorum pupilli ... describi patiantur propria bona inter illa pupilli ...”
78. Ibid., 1: 415-416: “Recepta & vera est interpretum sententia, tutori permissum quidem esse, palam suo cum pupillo contrahere, clam vero non esse ... quia contrahendo palam cessat fraudis suspicio ...”
79. Ibid., 1: 416.
80. Alciato, *De praesumptionibus*, 62: praesumitur consanguinei & affines non omissuri defensionem consanguinei sui ... Ex quo sequitur, quod non praesumatur indefensus, ex quo verisimile est, quod saltem affines vel amici eum defendent ...
81. Ibid., 65: non praesumitur per metum contraxisse, qui contraxit intervenientibus affinibus & consanguineis ...
82. Ibid., 63: “Et ex hac ratione prius etiam admitarentur ad tutelam.”
83. Godefroy, *De tutelis*, 22: “ut huiusmodi personarum consiliis vel interventu Tutores & Curatores suspecti removendi sunt: ita quod eorum consilio factum, gestum esse probabitur, bona fide & sine calumnia factum fuisse praesumendum fuerit.”
84. Ibid., 22-23: “alioqui Principes ob amicitiam jura transgredi nunquam praesumuntur; quia ei quem diligunt, aliter prodesse possunt, unde & certiolem gratiam & veriolem gloriam adsequantur.”
85. Freher, *De testamentaria tutela*, 77-78: “Idque sive ob praesumptam agnatorum fidem & affectionem, sive etiam quod hoc quidquid est honoris, coniunctioni & necessitudini sanguinis deberetur. Et facile servarunt hoc prepon jam ab omni antiquitate ipsi Palatini in familia sua, neque extraneos aut etiam gradu remotiores in invidiam & contemptum propinquorum unquam admiserunt ...” On the notion of *to prepon* in ancient rhetoric, see Poulakos, “*Toward a Sophistic Definition of Rhetoric*.”

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