

Chapter 5

The Opening Stage: The Obligation-to-Defend Rule (I)

5.1 The Obligation-to-Defend Rule in Non-mixed Disputes

As was already illustrated in the previous chapter, some discussions get derailed even before the discussant has put forward a single argument. A premature obstruction is also possible due to the discussants not being able to agree on the question *who* should actually put forward the argumentation: Which of the parties should come up with a defense? The rule of thumb in these sorts of cases is since classical antiquity: That he who alleges something must prove that allegation (cf. *affirmanti incumbit probatio*). According to this rule, under normal circumstances the party who brings forward a standpoint also has to defend that standpoint by putting forward argumentation if the standpoint is challenged. But language users who have brought forward a standpoint in a discussion are not always that keen on defending that standpoint. The most drastic way in which the protagonist can get out of his duty to defend is to shift the burden of proof to the opposing party, i.e., to the person who casted doubt on the standpoint: “If you don’t believe me, *you* should prove that it is *not* so.” This fallacy is known as *shifting the burden of proof*.

Usually, shifting the burden of proof happens in a more indirect way, as would appear from the following fragment which comes from an interview with Mr. Geertsma, the former Royal Commissioner in Gelderland, The Netherlands, in the weekly magazine *Televizier* in 1981. In this interview, this liberal ex-minister for Internal Affairs conveyed his suspicion that the squat actions and actions against nuclear energy that had taken place were financed with money which came from bank robberies. As an example he mentioned the recent squat actions in Nijmegen:

Thousands came by train to Nijmegen and stayed there for days on end. That must have cost a fortune. That money had to come from somewhere (...). I can’t prove it (...) and it’s not my responsibility to find out (*Het Parool*, August 20, 1981).

From a pragma-dialectical perspective it really is up to Mr. Geertsma to find out. What he conveniently ignores here is that he himself has the burden of proof for his own allegations and that it is not up to *others* to prove him wrong. Whether shifting the burden of proof happens in a blunt manner or in a more subtle way, there is in either case a violation of the pragma-dialectical rule for the opening stage: The obligation-to-defend rule.

In the opening stage the participants in the discussion decide to make an attempt to resolve the difference of opinion: Those involved consider whether there is sufficient common ground to be able to undertake a serious attempt to resolve the difference, they make agreements about the way in which they will conduct the discussion, the way it should end, the division of roles (who should be the protagonist and who should be the antagonist) and the material starting points of the discussion. In standard practice, it is usually understood that the above-mentioned conditions for a reasonable discussion have been fulfilled.

The rule that regulates the allocation of the burden of proof, the obligation-to-defend (also known as the rule for the opening stage) is as follows: “Discussants who advance a standpoint may not refuse to defend this standpoint when requested to do so.” As argued, this rule can be violated by the protagonist of a standpoint by challenging the antagonist – who has only expressed doubt – to take the opposite standpoint. A slightly more subtle method of wriggling out of the obligation to defend rather than to shift the burden of proof is to introduce the standpoint as something entirely matter-of-course that does not require any further defense. The protagonist is then guilty of committing the fallacy of evading the burden of proof. In order to avoid a discussion in this fallacious way, a protagonist has a vast armory at his disposal of more or less idiomatic expressions to emphasize that a standpoint, in a manner of speaking, is irrefutable: “It does not need to be argued that”, “There can be no two ways about it”, “There is no doubt that”, “That is logical”, “You don’t want to know!” and so on.

Another way in which the protagonist can dodge the obligation to defend is that he, as it were, personally vouches for the accuracy of the standpoint (“With my hand on my heart, I can personally assure you that”, “You can take it from me that”, “I guarantee you that”). The speaker vouches for the acceptability of the standpoint with his – in some cases alleged – expertise or authority. Here is an example taken from an interview with Leo Beenhakker, the former successful trainer and coach of the Amsterdam soccer club Ajax:

In the present situation it is tempting to lean back in all sections of Ajax because everything is going so well. That attitude could be disastrous. The championship was not the final destination, merely the departure point. We currently have eight boys out of our own youth in the A-selection. An extraordinary proportion. But I guarantee you: The Ajax river will run dry the next two years. We have to already anticipate that. (*Het Parool*, February 8, 2003)

A third way of evading the burden of proof is to phrase the standpoint in such a way that all the attempts at attacking ricochet off an armory of immunity. Every criticism to such “shady” formulated standpoints will be stifled because it withdraws itself from every form of judgment or testing: “Man is a hunter by nature”, “Women are essentially possessive”, and “Germans are basically war-minded.” In these standpoints general terms are continually used, e.g. man, women et cetera, whilst quantifying words such as “all”, “some”, and “on average” – expressions that, in principle, could lead to the falsification of such standpoints – have been deliberately avoided. How many counterexamples of peace-loving Germans does the antagonist have to give, will the protagonist ever give up his standpoint?

Those essentialistic expressions such as “essentially”, “by nature” et cetera immunize all criticism to such standpoints: Whoever produces a concrete counterexample of the standpoint that men are essentially hunters (“Utter rubbish! Look at uncle Joop!”) will be easily parried by the opposing party with the remark that the man given in the counterexample is not actually a “real” man or that the counterexample is a superficial observation that shows nothing about the essence of “man.”

In each of the fallacious discussion moves considered here ((1) shifting the burden of proof, (2) evading the burden of proof by presenting the standpoint as self-evident, (3) evading the burden of proof by personally guaranteeing the correctness of a standpoint, and (4) evading the burden of proof by phrasing a standpoint in such a way that it becomes immune to criticism) it has always been taken for granted that they exclusively occur in a non-mixed dispute, i.e. just one party has brought forward a standpoint therefore only one party has something to defend. But of the four fallacies discussed here, only one can be committed exclusively in a non-mixed dispute: Shifting the burden of proof. Crucial to this fallacy is that the protagonist, the one who brought forward the standpoint, turns the original non-mixed dispute into a mixed dispute by using devious means. However, in the three other fallacies the false moves could of course also occur in a mixed dispute.

In a mixed dispute, where both parties have brought forward a standpoint and therefore both have the burden of proof for their own standpoint, the case for the division of the burden of proof is somewhat more complicated than the fallacies dealt with in this chapter: In mixed disputes a decision has to be made regarding, among others, the sequence the parties will divest themselves from their burden of proof. Such mixed disputes, the specific problems with regard to the division of the burden of proof and the consequential unsound discussion moves will all be dealt with in the next chapter. In this chapter, we will discuss six experiments in which the obligation-to-defend rule is violated by (1) shifting the burden of proof, (2) evading the burden of proof by introducing the standpoint as something entirely matter-of-course, (3) evading the burden of proof by personally guaranteeing the rightness of a standpoint, and (4) evading the burden of proof by phrasing a standpoint in such a way that it becomes immune to criticism.

5.2 The Burden of Proof: *Onus Probandi*

The term *burden of proof* is originally a juridical term and refers to the obligation of proving the accuracy or plausibility of certain facts. The party with which this obligation rests in a legal process is the one who has the burden of proof. Unlike in everyday conversations, there are certain fixed rules in procedural law concerning the division of the burden of proof – should these be absent or in exceptional cases inadequate then the judge’s decision is decisive.

From a historical point of view, the term *burden of proof* originates in classic Roman law in which these “burdens” (i.e., task; order; obligation) were used to

present arguments in the name of *onus probandi* (cf. “burden of proof”). This term was specifically related to the fundamental, legally determined division of work and roles between the prosecutor and the counsel for the defense in legal proceedings: The *onus probandi* answered the procedural question which party should come when with evidence. Under classic Roman law the prosecutor had to start first in all cases and give an explanation of his charges; subsequently, he had to present arguments for his “case” (*agenti incumbit probatio*), after that the counsel for the defense had to argue his “counter case” in the so-called *exceptio*, then it was the prosecutor’s turn again with his *replicatio*, and so on (cf. Rescher, 1977, p. 25 et seq). In short, the burden of proof, in all cases, initially laid with the party that made an accusation. The basic assumption was expressed by the fundamental rule: *Necessitas probandi incumbit ei qui dicit non ei qui negat* (the obligation of proof rests with the person who makes the claim, not the one who denies the claim).

During an interview in the 1990s an irritated Wim Kok (Dutch PvdA labor party leader) was confronted with criticisms that the PvdA ministers in the coalition government were not creative. He reacted to this allegation in the following way:

I think it is a hard blow to typify present cabinet ministers in that way. There is no justification for that. There is not a scrap of truth in it.

Can you substantiate that?

Let the burden of proof be with the one that throws mud and not with me. What have we got now? If somebody throws mud around, do I have to prove that Hans Alders [a PvdA-minister] really is creative? You must be joking. That’s the topsy-turvy world.

Participants in an everyday argumentative discussion have the freedom in the opening stage to share the burden of proof between themselves as they see fit. It is perfectly feasible that the participants agree that the one who casted doubt on a standpoint in the confrontation stage takes the role of the protagonist and with it the defense of that standpoint. A similar agreement to act as “the devil’s advocate” can in some cases be beneficial to the critical testing of the argumentation for a standpoint (van Eemeren & Grootendorst, 1984, p. 159).

However, if in practice an explicit agreement has not been made about the division of the burden of proof, the burden of proof rests in principle with the one who brought forward the standpoint in the confrontation stage. Thus, this person will take up the role of the protagonist and has to defend the standpoint if challenged. The protagonist can only be released from this obligation to defend if he, firstly, has already defended the same standpoint against the same antagonist, while yet nothing has changed either in the starting points or in the discussion rules. The defense would, in that case, merely amount to a futile repetition of moves. Secondly, he can be released from his obligation to defend if he has a challenger who is not willing to commit himself to anything nor abide by the rules. Defending a standpoint is then an utter waste of time because the necessary conditions for resolving a difference of opinion are not met.

5.3 Shifting the Burden of Proof

In practice discussants sometimes try to avoid their obligation to defend a standpoint using devious means by simply putting the *onus probandi* on the shoulders of the opposing party. In *de Volkskrant* newspaper, William Rothuizen spotted a good example of this discussion trick used by, nota bene, the Dutch government courtesy of the TV License Fee Service, a public service that – at the time – fell under the administration of the Minister of Art and Cultural Affairs, Hedy d’Ancona:

In the newspaper *NRC Handelsblad* of 15 April minister d’Ancona mentioned “the successful hunt for illegal viewers.” That is a perfect example of a fallacy. That hunt proceeded as follows: On March 11 you will receive a letter from the TV License Fee Service under the motto: “A different view to your favorite program.” [...] You can see that your name and address do not appear in “our records” and since “a television can be found nowadays in almost every home in the Netherlands”, it is high time you paid your radio and television license fee. [...] Imagine you are one of the inhabitants of this country who does not have time to watch television or does not like what television has to offer. You have no television “at home” [...]. You would rather throw the nasty piece of correspondence in the waste basket, but it does not work like that. Enclosed is a form which you have to fill in stating you do not have a television. What minister d’Ancona calls a “successful hunt” is nothing short of reversing of the burden of proof.

In the case of the fallacy of shifting the burden of proof the protagonist makes various mistakes, which are illustrated in the following example:

A: Newspaper journalists are becoming less objective.

B: How’s that?

A: Now, then you explain that they are just as objective as they used to be.

Firstly, the protagonist, A, wrongly allocates the role of the protagonist to B: After all A should be the one to prove that newspaper journalists are just as objective as they used to be. Secondly, A erroneously pins a standpoint onto B. In the confrontation stage B did not take any standpoint whatsoever nor did he say he would defend any standpoint: He *only* casted doubt on A’s standpoint, which does not imply that he also brings forward a negative standpoint (in this case “it is not the case that newspaper journalists are becoming less objective”). Thirdly, the protagonist acts as if the difference of opinion is a *mixed* one when in actual fact it is clearly *non-mixed*. And the protagonist takes it even a step further when he himself completely backs out of his obligation to defend and to support his own standpoint.

The fallacy of shifting the burden of proof, also – following John Locke – referred to in the professional journals as *argumentum ad ignorantiam*,¹ hinders the

¹In Locke’s case it is about the protagonist’s attempt to get the antagonist so far that he will prove that the standpoint, which he only casted doubt on, is incorrect. The hidden fallacy is that the protagonist presents matters in such a way that the antagonist, by casting his doubt, is obliged to do so. In more recent publications the term *argumentum ad ignorantiam* is also used to indicate the so-called “ignorant” – or “stupidity” – fallacy which means that from the fact that it is not proven that something is the case will be concluded that it is not the case. Or from the fact that

resolution of the difference of opinion to a considerable extent. How the discussion further develops largely depends on the antagonist's (B) reaction. If he refuses to accept the standpoint that A erroneously pinned on him, the discussion will come to a standstill and to a premature end. But even if B does decide to defend that standpoint, the *original* difference of opinion cannot be resolved since a new discussion situation has arisen leaving B with the burden of proof for the reversal of the original standpoint casted in doubt. How will ordinary arguers react to this fallacious discussion move?

5.3.1 Set-up: Material

Thirty-nine students were presented with 48 dialogues, 36 of which contained a fallacy, the other 12 did not. In the 36 fallacious dialogues, the following fallacies were all committed 12 times: Shifting the burden of proof, the abusive variant of the *ad hominem* fallacy and the *tu quoque* variant of this fallacy. Here is an example of the fallacy of shifting the burden of proof taken from the material presented to the respondents:

- A: I think your friend is a little bit sneaky.
 B: How do you mean? Why should you think that?
 A: Explain to me why he isn't then.

As was the case with the study into the conventional validity of the freedom rule, the dialogue fragments, 48 in total, were presented in three discussion contexts, a scientific discussion, a political debate and a discussion in a domestic context (the dialogue given above comes from a domestic discussion context).² Here follows an

it is not proven that something is not the case will be concluded that it is the case. Even though misunderstandings about the burden of proof play an important role in this fallacy, all the same it is clear that we are dealing with another case: One of the most important differences between the fallacy of shifting the burden of proof and the *argumentum ad ignorantiam* is that the first concerns a violation of a discussion rule in the opening stage and the second concerns a discussion rule in the concluding stage. Violations of the last type will be discussed in Chapter 8; there the *argumentum ad ignorantiam* will be dealt with more extensively.

²Also in the case of the fallacy of shifting the burden of proof politeness could act as an alternative explanation for the results of the study. Take for example the above-mentioned short dialogues, where B, the antagonist, asks for further clarification and argumentation for the protagonist's standpoint. His request is not only ignored point-blank by A – which in normal conversations can be characterised as a relatively rude reaction – the entire conversation becomes even ruder because immediately after the non-compliance of his discussion partner's request, A launches the contra-attack by challenging B to defend an opposite standpoint (a standpoint which incidentally he has not even taken). Is the respondent's rejection of the fallacious discussion moves in the dialogues really based on the fact that the burden of proof was shifted or are there perhaps other factors on which they could have based the rejection of the discussion moves? A possible alternative explanation is that the judges have not so much based their rejection on the fact that the principle of the obligation-to-defend rule is violated, as well as the fact that in the dialogues a request from one of the parties to give a clarification, explanation or argumentation for his standpoint is refused by the other party – to make matters even worse it is "counter-attacked" (see, for example, *Simone*: Why do you think the Queen should stay? *Bianca*: No, *you* have to say why she should leave.). In their

example of a dialogue from a scientific discussion context and an example from a political discussion context:

A: I think it is impossible to study molecular movement with the help of spectroscopy.

B: Really? Why do you think that?

A: Well then, you prove that it is possible.

A: In our opinion, the *Betuwelijn* [a new railway track in The Netherlands] remains a necessity.

B: Why do you think that? Can you explain it?

A: Then you tell us how we can manage without the *Betuwelijn*.

Each dialogue presented for judgment consisted of three turns. In the first turn, A brings forward a standpoint (presented with standpoint markings such as “I think that”), the second turn always includes a reaction of doubt from B towards A’s standpoint (“Is that so?,” “What do you mean” etc.), followed by A being requested to explain and defend his standpoint (“Why do you think that?,” “Could you explain that?”). By that, B’s turn is explicitly situated in the opening stage. In the third turn, A commits the fallacy of shifting the burden of proof.

In this study three types of fallacies were studied for reasonableness and unreasonableness: Shifting the burden of proof and two fallacies taken out of previous studies: The direct personal attack and the *tu quoque* variant of the *ad hominem* fallacy – both latter fallacies also act as gatekeeper of the validity. But unlike in the study concerning the freedom rule reported on in the previous chapters where the direct attack and the *tu quoque* variant played a part and the dialogues generally consisted of two turns and where the fallacies were virtually all committed by the antagonist, the dialogues in this study all consist of three turns and it is not the antagonist but the protagonist who is guilty of committing the fallacies of the direct personal attack or the *tu quoque* variant.³ Here is an example:

A: I think that a Volkswagen is the best choice right now.

B: I think a Ford handles better; they just zoom along the road.

A: You can’t possibly conclude that, you don’t know anything about cars.

Should the results in this study concerning the reasonableness or unreasonableness of the direct attack and the *tu quoque* variant be consistent with those from the

judgments the respondents could have oriented themselves on a certain type of sequential continuation rule according to which the discussion partner who is asked first to clarify his standpoint also has the duty to give his clarification first. A similar rule is supported by the principle of conditional relevance from conversation analysis that after carrying out the first part of an adjacency pair, carrying out the second matching pair part is put on top of the “interactional agenda”.

³For this study all the fragments had to consist of three turns to prevent the respondents basing their judgments merely on the appearance (i.e. the sheer number of turns) and the formulations in a dialogue.

previous Chapters then this will be a good indication for the validity: The two fallacies concerned will then not only be judged as unreasonable discussion moves when committed by the antagonist but they are considered equally unreasonable when the protagonist commits the same offence.

5.3.2 Results

From the results (see Table 5.1) it appears that the respondents deem the fallacy of shifting the burden of proof to be a very unreasonable move, qua unreasonableness at least comparable with a direct personal attack.

When we leave out the discussion domain and the type of fallacy, on average, the three fallacies are deemed to be much less reasonable (2.97 (0.98)) than those discussion moves where no discussion rule had been violated (4.51 (0.67)). Each of the three type of fallacies (each represented by 12 instantiations) is, in a statistical sense judged to be less reasonable than the sound discussion moves (shifting the burden of proof: $F(1,46) = 60.77$; $p < 0.01$; $ES = 0.36$; direct attack: $F(1,32) = 30.55$; $p < 0.01$; $ES = 0.26$; *tu quoque*: $F(1,31) = 5.24$; $p < 0.05$; $ES = 0.05$). Considering the effect sizes concerned, it seems that the respondents discriminate the most between sound argumentation and the fallacy of shifting the burden of proof.

The respondents also noticed vast differences in unreasonableness between the three types of fallacies ($F(2,47) = 15.89$; $p < 0.01$; $ES = 0.14$). The fallacy of shifting the burden of proof and the direct attack, on average, are both deemed much less reasonable than the *tu quoque* variant ($F(1,47) = 29.75$; $p < 0.01$), but the respondents do not differentiate in reasonableness between shifting the burden of proof and the direct attack ($F(1,47) = 1.88$, n.s). In this study too it seems for the umpteenth time that – from an absolute point of view – the *tu quoque* variant is only considered to be an unreasonable move in a scientific discussion context. The ordinal pattern in reasonable relations between the direct attack and the *tu quoque* variant found repeatedly in previous studies was also found here, where these unreasonable discussion moves were not brought forward in two turns, but in three turns and where these unreasonable discussion moves were not committed by the antagonist, but by the protagonist. Naturally, this emerged stable pattern benefits the general applicability.

Table 5.1 Average reasonableness score per type of fallacy (shifting the burden of proof, direct personal attack and *tu quoque* variant), per type discussion context

	Shifting the burden of proof	Direct personal attack	<i>Tu quoque</i>
Discussion domain			
Domestic	2.52 (0.99)	2.87 (0.90)	4.17 (1.11)
Political	2.01 (1.05)	2.56 (0.86)	4.33 (0.94)
Scientific	2.58 (1.13)	2.80 (0.63)	2.83 (0.99)
Overall	2.37 (0.89)	2.75 (0.61)	3.78 (0.74)

Contrary to our expectations, it seems that this time the respondents did not discriminate between the three discussion contexts in a statistically reliable manner ($D = 3.19(0.76)$, $P = 2.99(0.69)$ and $S = 2.73(0.75)$), although the test results clearly lean towards significance (Helmert contrast between scientific context on the one hand versus the two other contexts on the other hand: $F(1,44) = 2.74$; $p < 0.10$; $ES = 0.01$). In order to exclude the “politeness” factor as an alternative explanation, we will have to use particularly the qualitative data.

In 12 of the 48 items some of the respondents ($n = 20$) had to give a brief explanation for their reasonableness scores; 9 of those 12 concerned a burden of proof fallacy. Not only from the quantitative results but also from the qualitative analysis it is abundantly clear that the respondents consider the fallacy of shifting the burden of proof a completely unacceptable move. The majority of the respondents (about 75%) are more or less capable of accurately indicating where the fallacy of shifting of the burden of proof fails in an argumentative sense:

- The problem is transferred to the other person
- A switches it around
- A does not use any arguments himself
- He doesn’t know himself, so A talks his way out of it

In a single, negligible case, one respondent based his judgment not on grounds of deficiencies in the argument put forward, but on a reaction that could point to a lack of politeness (“He gives no answer, he answers B’s question with a question”).

These qualitative results are in stark contrast with those from the previous Chapters which focused on the freedom rule. While it is already apparent from the (qualitative) study regarding the scope of the freedom rule that not a single respondent – neither in The Netherlands, nor elsewhere – is capable of articulating an explicit form of the freedom rule, in this study it seems, *nota bene*, that three quarters of the respondents can put the pragma-dialectical rule for the opening stage into words just like that (“Whoever alleges, has to prove,” “If you bring something forward, you have to be able to back it up with arguments,” and so on)! How can this remarkable result be explained?

Perhaps this result, or at least part of it, can be attributed to the idiomatic character of the obligation-to-defend rule which, in a manner of speaking, coincides with the specific violations. Phrases such as “Who alleges, has to prove” or “Who claims, has to prove,” are part of the verbal standard repertoire of the modal arguer. However, before we can conclude that our respondents at a relatively conscious level use a discussion norm that is more or less identical to or coincides with the pragma-dialectical rule for the opening stage, it will have to be proved that the range of that discussion norm goes slightly beyond the fallacy studied here: Also in other cases of violations of the freedom rule the respondents will have to appeal to this rule. And in the case of other violations, such as the burden of proof by presenting the standpoint as self-evident, it will not be that easy for our respondents to extract the relevant discussion rule from the dialogues as with the fallacy of shifting the burden of proof studied in this section: When it comes to the fallacy of evading the burden

of proof by presenting the standpoint self-evident, the respondents will undoubtedly not have as much support from phrases such as “you demonstrate it then,” “you tell me why,” “you prove it then” etc. – briefly, phrases (in this study constantly used) that, in a manner of speaking, have to bring the discussion rule concerned to the attention of the respondents.

5.4 Evading the Burden of Proof: Presenting the Standpoint as Self-Evident

Unlike in the fallacy of shifting the burden of proof where the protagonist acts as if it is not he who has something to defend but the opposing party, in the fallacy of evading the burden of proof it is the protagonist who denies that the standpoint which he brought forward even needs any defense. Particularly if the discussants suspect that their argumentation cannot sufficiently justify their standpoint they will often make use of such sayings as “There can be no two ways about it,” “Anyone in their right mind would agree with that,” etc., so that they can avoid their obligation to defend. In the following fragment, which illustrates the fallacy of evading the burden of proof, the writer uses a similar saying:

Anyone in their right mind sympathizes with parents who do not like their children playing in areas frequented by active homosexual men (M. Maessen *de Volkskrant*, August 30 1994).

People might get the idea that this fallacy belongs exclusively to the armory of experienced demagogues but the passage below about not smoking in public buildings, taken from a Dutch government leaflet, makes it clear that the evil is more widespread:

Of course everybody should decide for themselves whether he or she should smoke (even though everybody knows it is bad for your health). But not if it bothers others. Everybody would agree with that. And that is the whole point of the ban on smoking: Protecting the non-smoker from the nuisance of smoking.

A non-smoker should not be forced to do so by others. And let’s be honest, using a fan to try and blow away the smoke does not solve the problem. . . .

From: *Eindelijk een maatregel die helpt tegen rookoverlast* [Finally, a measure that helps against the nuisance of smoking]. The Hague 1990: *Stichting Volksgezondheid en Roken* [Foundation of Public Health & Smoking].

There is a multitude of such “reassurance-like” phrases (in the above-mentioned quote: “Everybody knows,” “everybody would agree with that” and “let’s be honest”) from which the protagonist can choose whenever he wants to emphasize the fact that the standpoint which he brought forward does not require any defense whatsoever because it is indisputable:

It needs no argument.

There can be no two ways about it.

It is beyond doubt.

It is logical.

You don't want to know!
 It speaks for itself.
 That's the way of the world.
 That is stating the obvious.
 It is simply an axiom/a dogma.
 There is no denying it.
 Anyone in their right mind must agree with this.
 There is no going back on this.
 That is absolutely certain.
 Without a shadow of doubt.
 That is clear.
 That is crystal-clear.
 That happens to be a fact.
 That is undeniably true.
 It is as clear as daylight.
 It cannot be denied.
 That is beyond dispute.
 That is beyond the shadow of a doubt.
 It is incontestable/irrefutable/undeniable/indisputable.
 It cannot be repudiated.
 It must be obvious to everyone.
 Et cetera

The suggestion implied by this reassuring set of words is that anyone who does not immediately see the obviousness of the standpoint must be extremely stupid – something that nobody likes to admit about themselves. However, in reality, these reassuring words often serves as a smoke screen to conceal the fact that the standpoint is not as impregnable as claimed. If the antagonist allows himself to be overwhelmed and intimidated by this discussion trick, gives up his critical attitude and retracts his doubt, he will be doing exactly what the discussion trick was set out to do.

5.4.1 Set-up: Material

Once again 48 short dialogues were presented to 32 students for their assessment (“How reasonable or unreasonable do you think A/B’s last reaction was?”); 36 of the dialogues contained a fallacy, 12 did not. They all consisted of three turns. From the fallacious fragments, the fallacy of evading the burden of proof (in a non-mixed difference of opinion) was committed 12 times, the direct personal attack was committed 12 times and the *tu quoque* variant of the *ad hominem* fallacy was also committed 12 times. Here follows a dialogue where the protagonist A commits the fallacy of evading the burden of proof:

A: In my opinion, you cannot economize on language and literature studies just like that.

B: And what do you base that on?

A: Well, that's logical, isn't it?

In this study, the dialogues were once again situated in the three, by now, familiar discussion domains: (1) A domestic situation; (2) a political debate; (3) a scientific discussion. Once more the most important reason for this is to exclude politeness as an alternative explanation. After all, as was the case in the fallacy of shifting the burden of proof, in evading the burden of proof the request for argumentation on the part of the antagonist is also bluntly ignored and furthermore parried with the suggestive reaction that whoever does not immediately see the obviousness of the standpoint – akin to apparently the antagonist – lacks the most elementary insight into logic: “Well, that's logical isn't it?”

Here are three examples of dialogues in the three discussion domains (respectively domestic, political and scientific) where the fallacy of evading the burden of proof is committed using a reassuring set of words:

A: I think that habit of yours, watching far too much television, is bad for your development.

B: How's that?

A: There can be no two ways about it.

A: I think the Dutch government should have done everything possible to save Fokker.

B: Why should you think that?

A: That speaks for itself.

A: I think smoking is bad for one's health.

B: Why do you think that?

A: Everybody has to agree with that.

To avoid alternative explanations in terms of “deviant types of items,” the sound argumentations in the second turn contain also a few phrases of doubt (“How's that?,” “Why do you think that?,” etc.).

5.4.2 Results

As anticipated, the respondents judged the discussion moves with a fallacy (in a relative sense), on average, to be much less reasonable (3.48(0.55)) than discussion moves without fallacies (4.68(0.87)). This also applies to every type of fallacy individually (see Table 5.2, where every type of fallacy ($k = 12$) was compared with non-fallacies ($k = 12$)).

These results are in accordance with those from our previous empirical study: In all cases the discussion moves with fallacies were deemed less reasonable than moves where no fallacy was committed. Do the respondents also differentiate in reasonableness between the three types of fallacies? Will the direct personal attack again be found to be consistently less reasonable than the *tu quoque* variant, as

Table 5.2 Average reasonableness score per type of fallacy (evading the burden of proof by presenting the standpoint as self-evident, direct personal attack and the *tu quoque* variant) compared with non-fallacies

Type of fallacy	Average	F	p	ES
Evading of the burden of proof	3.04 (0.72)	24.05 (1,47)	0.01	0.24
Direct attack	3.18 (0.77)	32.82 (1,50)	0.01	0.24
<i>tu quoque</i>	4.23 (0.82)	3.83 (1,29)	0.05	0.03
Non-fallacies	4.68 (0.87)			

Table 5.3 Average reasonableness scores per type of fallacy (evading the burden of proof by presenting the standpoint as self-evident, direct personal attack and the *tu quoque* variant), per type of discussion context

	Evading the burden of proof	Direct personal attack	<i>Tu quoque</i>
Discussion domain			
Domestic	3.45 (0.72)	3.33 (0.95)	4.02 (1.19)
Political	3.03 (0.99)	3.13 (0.99)	4.78 (0.95)
Scientific	2.63 (0.89)	3.09 (0.88)	3.88 (1.01)

was the case in our previous study? And will the *tu quoque* variant once again be found unreasonable only in a scientific discussion context? From the data shown in Table 5.3 we see that all these questions can be answered affirmatively.

The respondents appear to strongly discriminate between the three fallacies studied ($F(2,47) = 46.69$; $p < 0.01$; $ES = 0.11$). The marginal difference between the direct personal attack and the fallacy of evading the burden of proof is statistically insignificant ($F(1,47) < 1$); the difference between, on the one hand, the direct attack and the fallacy of evading the burden of proof and the *tu quoque*-variant, on the other hand, appears statistically reliable ($F(1,47) = 18.71$; $p < 0.01$), which was also the case with the fallacy of shifting the burden of proof. And just like in the case of the fallacy of shifting the burden of proof, the respondents deemed, without hesitation, the fallacy of shifting the burden of proof a less reasonable discussion move, irrespective of the discussion domain. In the domestic and political discussion domain the *tu quoque* variant was yet again seen as an acceptable discussion move, which was also the case in the previous study: Only in a scientific discussion context was this fallacy yet again considered an unacceptable move.

The respondents appear not only to discriminate between the three fallacies but also – albeit less pronounced – between the three discussion domains ($F(2,38) = 2.33$; $p < 0.05$; $ES = 0.02$). This result is also entirely in line with earlier findings. The fallacies in a scientific discussion (3.20(0.55)) were again judged the most severe (compared with the two other discussion contexts ($F(1,38) = 3.02$; $p < 0.05$)), whilst in this study again no statistical reliable difference could be found between the unreasonableness of fallacies in a political context (3.65(0.72)) or in a domestic context (3.60(0.72)) ($F(1,38) < 1$). These results are also in accordance with our

earlier study and they also confirm our suspicions: When it comes to judging the unreasonableness of fallacies, the respondents let themselves be led primarily by their critical considerations and not so much by considerations relating to politeness.

In order to gain more insight into the exact motives and grounds on which the respondents base their reasonableness judgments, the experiment was repeated on 47 students. This time only 24 dialogues were presented instead of 48 (every combination of independent variables was now represented by 2 dialogues). In half of these 24 cases, the respondents had to account for their judgments in writing.

Even though the number of items in this modified replication was significantly reduced, the quantitative results still showed striking similarities with those of the previous experiment: Sound argumentation is once again found to be much more reasonable than unsound argumentation (5.15(0.66) versus 3.10(0.76)). By and large, we also see the established relation between the three types of fallacies and the three types of discussion domains (see Table 5.4).⁴

For the purpose of developing a coding system for the motivations given by the respondents, three respondents were asked to think aloud when judging the 24 dialogues in the test on reasonableness. These three respondents responded to the following dialogue (situated in a political discussion context):

A: I personally think that nobody's spending power declined in the last cabinet period.

B: And what do you base that on?

A: Well, I'm absolutely convinced of it.

Table 5.4 Average reasonableness score per type of fallacy (evading the burden of proof by presenting the standpoint as self-evident, direct personal attack and the *tu quoque* variant) per type of discussion context; replication

	Evading the burden of proof	Direct personal attack	<i>Tu quoque</i>
Domestic	3.54 (1.05)	3.07 (0.92)	4.44 (1.47)
Political	2.17 (0.92)	2.61 (1.05)	4.63 (1.09)
Scientific	2.72 (1.14)	2.04 (0.93)	2.71 (1.08)

⁴In this replication the respondents also made a distinction between the three types of fallacies in a statistical reliable way ($F(2,14) = 11.69$; $p < 0.01$; $ES = 0.14$). Specific: The *tu quoque* variant is once again, exactly as in the main study, found to be more reasonable than the two remaining fallacies ($F(1,14) = 7.48$; $p < 0.01$), whilst the respondents again did not discriminate in unreasonableness between the direct personal attack and the fallacy of evading the burden of proof. The results concerning the unreasonableness of the fallacies within the three specified discussion contexts were also consistent with those in the main study ($F(2,13) = 8.12$; $p < 0.01$; $ES = 0.09$). The fallacies within a scientific discussion context again appear to be found much less reasonable than those in the remaining two discussion contexts ($F(1,13) = 40.39$; $p < 0.01$); however, unlike in the main study and also unlike in previous studies, the respondents appear in this replication to discriminate between a domestic and a political discussion context: $F(1,13) = 10.43$; $p < 0.01$).

Respondent 1:

Well, I think this is um totally unreasonable, yeah, that's not even a sentence, you don't say that, someone like that should be removed from the Senate.

Respondent 2:

B asks a very specific question, "What that is based on?," therefore A should then be able to produce arguments, specific detailed arguments to substantiate what it is based on but B (...) does not do that, no, "What do you base that on?," upon which A could then react by giving detailed information to show what it is based on but he does not do that, again he says something um very general like well I'm convinced of it, instead of producing real arguments (...) that B can actually use, thus um, I just think so, now shall we just say, very unreasonable, yes very unreasonable, (...) he has his point of view and that's that, full stop, over and out, now I'm just convinced of it, finished, the end, end of discussion.

Respondent 3:

Well, that is really stupid, that is no answer to the question (...) no, A does not answer B's question and he has to (...) very unreasonable indeed, A just wants to make something clear to B and B asks why do you think that and A only says um "I just know": That's just, just ... well, he should give an answer that um, ah, eh, finally is clear to B just exactly what it is based on, and eh in politics totally convinced is anything but that, I mean this is about facts, this is not about being totally convinced, he should have added something to his answer I'm totally convinced of it because adding with ...yeah, then it was more reasonable if something came after that, like um some sort of eh evidence, or at least something you could clutch onto.

On the basis of the answers given by these three respondents a classification was made comprising three main categories:

- (1) Violating the obligation-to-defend rule (with two sub-categories): (1a) Explicitly referring to the obligation-to-defend rule; (2a) implicitly referring to the obligation-to-defend rule;
- (2) Politeness (with two sub-categories): (2a) Impolite due to the phrase used; (2b) impolite due to the violation of a conversational postulate, in this case the non-compliance of a request for further information/argumentation);
- (3) Answers that cannot be interpreted/no answer.

In order to illustrate the classification, here are a few examples. The reaction of the first respondent falls into category 2, "Politeness," to be exact, in sub-category 2a "impolite due to the phrase used" ("you don't say that – someone like that should be removed from the Senate").

The considerations and motivations of the second respondent fall into category 1, "Violating the obligation-to-defend rule" ("B asks a very specific question, 'What do you base that on?' upon which A could then react by giving detailed information to show what it is based on, (...) but he does not do that, again he says

something um very general like well I'm convinced of it, (. . .) instead of producing real arguments that B can actually use").

The deliberations of the third respondent fall into two main categories, 1 and 2; "he should have added something to his answer I'm totally convinced of it because adding with . . .yeah, then it was more reasonable if something came after that, like um some sort of eh evidence" and in 2 the reaction falls into sub-category 2b, "impolite" due to the violation of a "conversational postulate," in this case the non-compliance of a request for further information ("that is no answer to the question (. . .) no, A does not answer B's question and he has to (. . .) very unreasonable indeed, A just wants to make something clear to B and B asks why do you think that and A only says um 'I just know:' That's just, just . . . well, he should give an answer that um, ah, eh, finally is clear to B just exactly what it is based on"). There is also a lot to be said for an interpretation of the last reaction of the third respondent as a reaction where it is obvious that the person concerned wants to see arguments for a claim so that it can be interpreted as a reaction that can only fall under the first main category – we have deliberately chosen for a coding system that opposes our hypotheses.

With regard to the six dialogues where the fallacy of evading the burden of proof was committed, 301 written explanations, i.e., motives, were given by the 47 respondents in the replication (the total number of explanations exceeds the maximum of 282 because some of these explanations could be brought under more than one of the categories used). Of these 301 explanations, 35.5% of the content could not be interpreted; 52.1% of that could be traced to the pragma-dialectical obligation-to-defend rule ("you have to substantiate;" "if A does not give any arguments, then his opinion makes no sense at all;" "A has to provide evidence." etc.), 5.3% fell into the category "politeness" (with two sub-categories: (1) "You don't say that;" "that is provocative" (2) "no answer given to the question asked"). The majority of the explanations given indicate that the discussion contributions where the burden of proof was evaded by introducing the standpoint as something matter-of-course which requires no defense has in the eyes of the respondents failed in an argumentative sense.

The question is whether in the case of this fallacy of evading the burden of proof the majority of the respondents are capable of putting forward the obligation-to-defend rule in an explicit manner as was also the case of the fallacy of shifting the burden of proof? Or will this percentage now perhaps drop because the respondents have little or no support from the phrases used? As can be deduced from the percentages given above, this percentage drops substantially. In this study, barely 1/3 of the respondents can formulate the rule in an explicit way.

5.5 Evading the Burden of Proof: Personally Guaranteeing the Correctness of the Standpoint

In the hope of wriggling out of the *onus probandi* a protagonist can use phrases with which he, as it were, *personally* vouches for the acceptability of the standpoint: "I can personally assure you, with my hand on my heart that," "You can be rest

assured that,” “I guarantee you that,” etc. The speaker vouches for the acceptability of the standpoint with his – in some cases alleged – expertise or authority. Prince Bernhard of The Netherlands tried to bring off something similar in an interview published posthumously in the *de Volkskrant* newspaper in which he defended himself against the never-ending allegations that keep popping up about him being a member of Hitler’s NSDAP in the 1930s:

I can declare with the hand on the Bible: I was never a Nazi. (*de Volkskrant*, 14 December 2004)

As was the case in the fallacy of evading the burden of proof using a reassuring set of words, in this fallacy the protagonist also has a whole range of possible standard phrases to choose from to easily ensure that a standpoint is not open to discussion:

I can personally assure you, with my hand on my heart that
 For me personally, it is beyond doubt that
 If that’s not so, I’ll eat my hat
 I guarantee you that
 I promise you that
 I assure you that
 I’ll put it in writing
 I know what I’m talking about
 I can’t imagine anything other than
 I personally guarantee it
 I’m totally convinced that
 You can be rest assured that
 You can bet your life on it
 You can take it from me
 As far as I’m concerned, it’s beyond all doubt
 I personally vouch for it

Because the protagonist, with the help of the above-mentioned phrases, personally vouches for the accuracy of his standpoint (to virtually every phrase the epithet “personally” can be added for extra emphasis; e.g., “I personally guarantee you that . . .”), he makes it extremely difficult for the antagonist to pursue his doubt. If the antagonist still perseveres he casts immediate doubt on the protagonist’s expertise or even his integrity.

The more or less *apodictical* formulations given above could also be used by the protagonist in a devious way to put the opposing party, as it were, on the spot or to fall for the standpoint or to abandon his trust in the protagonist. The last would mean a loss of face for the protagonist and if at all possible the antagonist will wish to spare him that – at least the protagonist considers this when he makes use of this fallacious move.

Vouching for the acceptability of a standpoint via one’s own authority or expertise for the purpose of putting the opposing party under pressure resulting in him casting aside any doubt is a notoriously improper discussion move. In

the pragma-dialectical approach, there are, however, two other types of fallacies distinguished that in one way or another have something to do with authority: The *argumentum ad verecundiam* as a violation of the relevance rule and the *argumentum ad verecundiam* as a violation of the argument scheme rule. It is important to keep the fallacy of evading the burden of proof (by personally guaranteeing the correctness of the standpoint) discussed in this chapter and the two other fallacies apart in a conceptual analytical sense, because the term “authority” plays a different role and in the each of these fallacies a different pragma-dialectical rule is violated.

The *ad verecundiam* fallacy is also known in argumentation theory as bragging about your own qualities where actual argumentation can (may) be expected. Thus bragging is in fact a form of non-argumentation: The speaker throws his own qualities into the fight, exploits character traits, know-how or other qualities so that everybody will take his word for it – in short, he uses his *ethos* to win public support for his standpoint. This fallacy, also known as the *ethical fallacy*, is a violation of the relevance rule (rule 4): “Standpoints may not be defended by non-argumentation or argumentation that is not relevant to the standpoint.”

According to Aristotle, compared to the two other means of persuasion *pathos* and *logos*, *ethos* is most effective when looking for approval in an auditorium; if a speaker has a particularly strong *ethos* this can then even make the presentation of arguments for a standpoint totally superfluous. However, when the appeal to *ethos* takes the place of argumentation, from a pragma-dialectical perspective the use of authority becomes fallacious.

In itself there is nothing wrong with using *ethos*; in many cases participants in a discussion have no choice but to accept the authority of the experts. Some subjects require such a lot of specialized knowledge that a layman simply cannot assess the acceptability of the standpoints at issue. Of course, there is something wrong when a person ought to be able to rely on does not have the required expertise or when the professed expertise is totally irrelevant for the issue under discussion, e.g., when somebody deliberately projects himself as a professor and lectures on nuclear energy in that capacity, while he is in fact an expert in speech communication.

In the case of the fallacy of misusing authority, which like the ethical fallacy appeals to expertise and know-how, a standpoint is defended by referring to a so-called authoritative source (a person or a written source) who claims it to be so – whilst in fact the source is not an authority at all. In the case of such an authority fallacy, unlike in case of the ethical fallacy discussed above, argumentation has been put forward but the argument scheme has been incorrectly applied. In fact, this (authority) fallacy is a violation of rule 8, “Standpoints may not be regarded as conclusively defended by argumentation that is not presented as based on formally conclusive reasoning if the defense does not take place by means of appropriate argument schemes that are applied correctly,” because this argument scheme rule, and the exact meaning of the accompanying term “argument scheme” will be discussed at length in Chapter 7, we will not pursue the matter here.

5.5.1 *Set-up: Material*

Of the many possible stylistic variants only the following six will be looked into:

1. I guarantee you that
2. I promise you that
3. I assure you that
4. trust me . . . in the field of
5. take it from me that
6. believe me . . . in the area of

From the pilot study which took place prior to this study it seems that colorful phrases such as “I can personally assure you, with my hand on my heart that” could not be used due to their stylistic conspicuousness – merely by their succinct appearance the fragments which contain these phrases would be too easily recognized as a similar fragment with the risk that the respondents would find out the purpose of the study. That is why more discreet, less pathetic phrases were chosen like the six examples given above.

The six phrases used in this study, taking Searle’s taxonomy of illocutionary acts as a starting point, fall into two groups: The first three (“I guarantee you that”; “I promise you that”; “I assure you that”) fall into the category of the “commissives”, phrases 4 up to and including 6 (“trust me . . . in the field of”; “take it from me that”; “believe me . . . in the field of”) fall into the category of the “directives”. It is expected that the language users will dismiss both types of speech acts as unreasonable.

It is more difficult to give a prognosis for the difference in unreasonableness between the two types studied: After all it could go either way (on the one hand, phrases 1–3 can come out on top as being the most reasonable, on the other hand, phrases 4–6 could also come out on top. It is conceivable that the phrases which fall into the category of the commissives could be considered less reasonable due to the fact that the propositional content condition is openly violated and therefore the promise is “defective” as a promise, but it is just as likely that the fallacious phrases which fall into the category of the directives will be found less reasonable than the “false” commissives because of the fact that the protagonist with such directive phrases (“believe me now”) requests the antagonist in a rather paternalistic way to accept a controversial standpoint purely on a personally title and the authority of the protagonist without him having to present urgent reasons for this. Here follows an example taken from our own material:

Marjolijn and her friend Karin are sitting in a park while talking to each other about strangers that are walking by. A couple passes. Marjolijn thinks that it is true love, Karin thinks otherwise.

Marjolijn: Why do you think it will go wrong between these two?

Karin: Oh, just trust me, that boy is afraid to commit himself to a relationship.

Unlike in the preceding studies, the dialogue fragments offered this time were no longer situated in one of the three well-defined discussion contexts (i.e. a domestic

context, a political debate or a scientific discussion). From the context as an independent variable will be abstracted from now on. In previous studies the “politeness” factor appeared to play a marginal, if not negligible role in the judgment of reasonableness – and exactly because of the exclusion of alternative explanations in terms of this “politeness” factor all the dialogue fragments were situated in one of these three specified contexts. The abandonment of the three discussion contexts as an independent variable and the possibility of freely varying the context implies – in principle – huge gains in the areas of external and particularly ecological validity.

In order to homogenize the interpretations obtained from the respondents all the dialogue fragments – also in this new set-up – were offered in a well-defined context, albeit that the context varied per dialogue fragment. That homogenization was necessary to ensure that the respondents when judging the reasonableness of discussion contributions start from more or less the same context and background. In the described context of each dialogue fragment, the situation and the two discussion partners were specified, the standpoint for discussion was elucidated, the nature of the difference of opinion (mixed or non-mixed) was indicated, the role of the discussion partners was specified (who acts as the protagonist and who is the antagonist) and it was made clear in which stage of a critical discussion (the confrontation stage, the opening stage, the argumentation stage – or the concluding stage) the discussion contribution had to be localized, etc.

In order to ascertain if the respondents would deem the fallacious discussion moves where “false” promises were made or “false” persuasiveness was suggested as unacceptable, it is necessary from a methodological point of view, to contrast these fallacious moves with “real” promises and “real” persuasiveness, in short, with non-fallacious equivalents. Here follows an example taken from our own material which contains a “real” promise:

Els wants to order three large bouquets for a party. She thinks it best if she picks them up herself. The florist disagrees; he thinks his van would be a better option.

Els: But why is your van the best way?

The florist: Because I can guarantee you that your bouquets will stay nicer looking.

The respondents were presented with a total of 32 fragments, 10 of which were sound argumentations and 22 were fallacious. In 5 of the 10 sound argumentations “real” promises were made, the other 5 contained legitimate appeals to trust the speaker. In 5 of the fallacious fragments the burden of proof fallacy was violated using a “false” promise, in the other 5 this violation was committed using a “false” appeal to trust the speaker. The remaining 12 fallacious moves contained a direct personal attack (3 times), a *tu quoque* fallacy (3 times), a fallacy of shifting the burden of proof in a non-mixed difference of opinion (3 times) and a fallacy of evading the burden of proof by introducing the standpoint as something entirely matter-of-course (also 3 times). The function of these 12 fallacious moves – “fillers” actually – is identical to those of the fillers in previous studies: (1) Variation of content and formal variation so that the respondents cannot reach a decision based merely on appearance (2) making stability control possible (the fallacy of shifting the burden

of proof and the direct personal attack will both be found unreasonable, more or less to the same extent, while the *tu quoque* fallacy will lean towards reasonableness).

One hundred and fifty four respondents took part in the study; this test was replicated by 83 students who in 16 of the 32 cases had to give their motives for their judgments of reasonableness.

5.5.2 Results

The fillers behaved as expected: The *tu quoque* leaned towards reasonableness, the direct personal attack and the fallacy of shifting the burden of proof were both found to be unreasonable, more or less to the same extent – in any case much less reasonable than the *tu quoque* fallacy. The fallacy of evading the burden of proof by presenting the standpoint as self-evident behaved as one might have expected from previous studies. See Table 5.5 for the exact results.

As Table 5.6 depicts, both types of sound moves are judged (in an absolute sense) by the respondents to be reasonable but the respondents dismissed their fallacious counterparts. The difference between the sound variant and the unsound variant is significant, both in the main study and in the replication (main study (promise): $F(1,9) = 25.34$; $p < 0.01$; $ES = 0.33$; main study (trust): $F(1,12) = 138.19$; $p < 0.01$; $ES = 0.45$; replication (promise): $F(1,9) = 28.43$; $p < 0.01$; $ES = 0.39$; replication (trust): $F(1,22) = 140.04$; $p < 0.01$; $ES = 0.43$). In this study where the burden of proof fallacy (via personally guaranteeing the rightness of the standpoint) was the main theme, again, those fallacies were found to be less reasonable than their sound counterparts.

So what is now the relation as far as unreasonableness is concerned between the two types of fallacies where the speaker personally vouches for the accuracy of the standpoint? Which type will be found unreasonable, the “false” promise or the “false” persuasiveness based on trust? In the main study there seems to be a substantial difference in favor of the fallacious promise, which is found to be less unreasonable ($F(1,10) = 6.05$; $p < 0.05$; $ES = 0.04$); in the replication the data point in the same direction, but matched against conventional significance criteria the result cannot be confirmed ($F(1,10) = 1.890$; $p < 0.25$;

Table 5.5 Average reasonableness score for the fillers (direct attack, the *tu quoque* variant, shifting the burden of proof, evading the burden of proof by presenting the standpoint as self-evident), in the main study and in the replication

	Main study (n = 154)	Replication (n = 83)
Direct attack	2.37 (0.86)	2.37 (0.84)
<i>Tu quoque</i> variant	3.50 (1.08)	3.17 (1.23)
Shifting the burden of proof	2.49 (0.90)	2.74 (1.01)
Evading the burden of proof by presenting the standpoint as self-evident	2.06 (0.86)	2.24 (0.94)

Table 5.6 Average reasonableness score for the fallacy of evading the burden of proof by personally guaranteeing the correctness of the standpoint (via a commissive or a directive), compared with non-fallacious commissives and directives, per type of study

	Main study (n = 154)	Replication (n = 83)
Sound argumentation (commissive)	5.18 (0.82)	5.08 (0.85)
Evading the burden of proof (commissive)	3.29 (0.99)	3.07 (0.97)
Sound argumentation (directive)	5.14 (0.92)	4.92 (0.97)
Evading the burden of proof (directive)	2.77 (0.75)	2.68 (0.72)

ES = 0.03). In light of the size of the samples, however, it seems plausible that the difference between the two sorts of evading the burden of proof found in the main study should be considered more important than the result found in the replication.

Do the respondents also see where the fallacy of evading the burden of proof (by personally guaranteeing the rightness of the standpoint) fails from an argumentative point of view? Will they then appeal explicitly to the obligation-to-defend rule (or a verbalized variant thereof), as was the case with the fallacy of shifting the burden of proof? Or will they approach every dialogue fragment as a new, unique fragment without realizing that the violations occurring in this concrete fragment are only a coincidental instantiation of a higher ranked category to which the same abstract discussion rule applies, as was the case with the violations of the freedom rule?

Unlike in the case of the fallacy of shifting the burden of proof, where the vast majority of the respondents were apparently capable of putting together the text given rule in an explicit form “just like that” and could do that invariably at each new dialogue fragment where the fallacy was committed, it appears from the cases studied here that not a single person is capable of putting together the obligation-to-defend rule (or a verbalized variant thereof) in an explicit form. This “dramatic” result leads to the down-to-earth conclusion that when it comes to the fallacy of shifting the burden of proof the respondents have referred to the obligation-to-defend rule to motivate their judgment of reasonableness purely on the basis of the phrases used in the dialogue fragments: “Can you prove that?,” “Can you explain that?,” “What is that based on?,” et cetera. If there is no similar phrase which seems to act as the evocator of the abstract obligation-to-defend rule, then for each fragment the respondents resort to more or less unique principles of factors.

When it comes to the fallacy of personally guaranteeing the rightness of the standpoint even though the respondents are totally incapable of verbalizing the obligation-to-defend rule, most of them are perfectly aware of exactly what goes wrong with this fallacy. The 8 dialogue fragments where the protagonist commits the fallacy of evading of the burden of proof led to 664 comments, 200 of which (= 30%) could not be interpreted (no answer; irrelevant comment such as “I really don’t know” or “weak argument”). Of those motives that could be interpreted, 351 comments (= 76%) fell into the group which is indicative of insight into the fallacious nature of this discussion move. Here follow a few examples of the comments given:

Mr. Blom, the director, thinks that the company should delay expanding due to an unfavorable economy. Mr. de Vries, the manager, thinks that the time is right to be one step ahead of the competition.

Mr. Blom: But aren't we taking too much of a risk?

Mr. de Vries: I promise you the economy will pick up again within a year and we'll make a fortune.

- because he promises pretty unreasonable things, while he has no influence
- because he cannot manage the economy, he cannot guarantee it
- because the poor soul makes a promise he cannot keep
- because Mr. de Vries certainly cannot predict the future
- because he does not know if he cannot keep his promise

5.6 Evading the Burden of Proof: Immunizing a Standpoint Against Criticism

In an interview in *Mare* (magazine of the University of Leiden) Elise Peters and Vincent van Beest, representatives of the *Leidse Studenten Belangenorganisatie* (Leidse Student Association), reflected on the changes in tertiary education. Elise complains about the indifferent, feeble position of present-day students:

Students are indifferent (...) The student voices his opinion too little, particularly now when there is so much happening in the field of education: Distinctions made in college fees, education rights system, selection at the door. (*Mare*, May 2005)

It is unclear whether Elise Peters means all students when she refers to “students” – no exceptions – or to most students, or perhaps to the average or modal student because there is no quantifying phrase. The same applies to “the student”: Who exactly does she mean? A similar “hermetic” formulation of the standpoint could perhaps be a rational, deliberate tactic on her part to evade the burden of proof for her standpoint, but the only way to find out whether or not this is the case is to challenge her to defend her standpoint.

Imagine that someone criticizes Elise's standpoint by casting doubt on it (“Are students really so indifferent?”), or by taking an opposite standpoint and providing counterexamples (“I think students are not at all indifferent. Take Vincent and Lianne as an example”). As a reaction to the criticism there are several courses open to her: She can simply retract her standpoint, she can present arguments for her standpoint, but she can also bring her standpoint forward again by rephrasing it. In the first option, Elise bears the criticism of the antagonist, in the second option she fulfills her obligation to defend. In the last option – and we will confine ourselves to this possibility in which the standpoint is rephrased – two different functions can be ascribed to rephrasing the standpoint: This can serve to bear the criticism to a larger or lesser degree or to dismiss the criticism. If Elise bears the criticism of the antagonist, then she can use the point that was brought forward in her rephrasing of the original standpoint (“Well, I mean that *most* students are indifferent”). However,

she can also resolutely dismiss the criticism and stick to her original standpoint by repeating it (almost) literally: “Students are actually indifferent” or “Students are in essence indifferent” possibly adding such remarks as “The people you mentioned are not actually ‘real’ students.” Via such reformulations as these Elise is actually guilty (not in reality but hypothetically) of committing the fallacy of evading the burden of proof: She (re)phrases the standpoint so that it is in fact immune to criticism.

A difference of opinion can never be resolved in such a way: Essentialistic phrases with quasi-definite (or indefinite) particles withdraw themselves from every empirical testing; such phrases are non-falsifiable, making them unsuitable for attack and defense in a reasonable discussion.⁵ In a reasonable discussion, the standpoints that are put forward and called into question have to be defended against critical attacks, but the difference of opinion remains stuck in the opening stage of the discussion and cannot be resolved on the merits if a party phrases a standpoint in such a way that criticism is in principle impossible.

5.6.1 Set-up: Material

Thirty-eight students (4th year high school students) judged the reasonableness or unreasonableness of 49 dialogue fragments consisting of mixed and non-mixed differences of opinion between two discussants. In 12 dialogue fragments, the burden of proof was evaded via immunization of that standpoint:

A: The French are hedonists.

B: Um, you can't say that about Jean and Pierre: They are always complaining.

A: That may be, but in any case, the French are hedonists by nature.

The 12 dialogues where the standpoints are immunized all consist of three turns. In the first turn, speaker A presents a standpoint which contains an unquantifiable phrase that could be characterized as a stereotype (“Students are eager to learn,” “Brazilians love to dance,” etc.). In the second turn, speaker B reacts by giving concrete counterexamples to negate the stereotype. Speaker A does not allow him-

⁵These types of sayings (about the thriftiness of the Scots, the dourness of the Friesen, the soberness and tolerant attitude of the Dutch, the “thoroughness” of the Germans, the often mocked effemininity of Frenchmen, etc.) were particular in fashion at the end of the eighteenth, begin nineteenth century in the so-called “Science of national character” (and in the slightly later dialectology, at least in some sub-disciplines of it). These people were particularly inspired by history (the “*historia magistra vitae*”), e.g., Minister Willem Ockerse (1760–1826) ascribed to Dutchmen such characteristics as “simplicity, moderation, thriftiness, diligence and decorum.” In his series of books *Ontwerp tot eene algemeene characterkunde* (1788) where he tried to typify “the” Dutch “national character,” based on the study of the earliest Dutch history of the Batavian up to the eighteenth century, he ascribed to the Dutchman an uncompromising devotion to the religious principles, which has undoubtedly something to do with his religious convictions as a protestant minister. The great philosophical problem with these sorts of sayings is their non-refutableness.

self to be swayed by this criticism but sticks to his standpoint and rephrases this by adding an essentialistic expression (“in essence,” “by nature,” “actually,” etc.).⁶

Furthermore in this study four reasonable counterparts were constructed of the fallacies mentioned here. In the non-fallacious fragments speaker A either adjusts his standpoint (for example by adding a quantifying phrase) or retracts his standpoint after B’s criticism:

A: The British are rather attached to tradition.

B: On the contrary, most of the Britons I know are revolutionary.

A: I don’t mean all the British, but your typical Brit. He is rather attached to tradition.

The remaining fragments partly consist of sound argumentation (13) and partly of “fillers”: *Reductio ad absurdum* (6), *argumentum ad hominem* (abusive variant) (3), *argumentum ad hominem* (*tu quoque* variant) (3), the fallacy of shifting the burden of proof (3) and the *argumentum ad consequentiam* (5). The fillers (most of them came from earlier studies) should make a stability check or, as the case may be, a validity check possible again; furthermore they have to prevent the participants in this study from becoming aware of the point of this exercise – a danger that is not imaginary considering the conspicuous stereotype nature of the standpoint that A brings forward, the invariable use of essentialistic phrases and the consistent ignoring of the criticism of the antagonist by the protagonist.

5.6.2 Results

The fillers behaved as one might expect based on previous studies: Shifting the burden of proof (2.91(1.28)) was found to be more or less equally unreasonable as the direct attack (2.86(1.04)), whilst the *tu quoque* variant was considered to be a somewhat reasonable move (4.12(0.88)) (Table 5.7)

Table 5.7 Average reasonableness score for the fallacy of evading the burden of proof (by immunizing the standpoint) and for the reasonable counterparts

Fallacy of evading the burden of proof (via immunization)	2.93 (0.96)
Reasonable counterparts	4.76 (0.88)

⁶When constructing these 12 dialogue fragments we deliberately chose charged standpoints so as not to mobilise the attitudes of the respondents. We tried keeping the sections of the population with regard to the stereotypes as “neutral” as possible: That is why groups such as the French and Brabanders were chosen and not Turkish, Moroccan or Antillean population groups (in The Netherlands these last groups are often discriminated against). The characteristics ascribed to these groups were, as much as possible, also non-loaded and were in all cases neutral or positive. For example, the Brabanders are ascribed the more or less neutral characteristic of “loving carnival.”

In a statistical sense, the fallacy of evading the burden of proof is considered much more unreasonable than its reasonable counterpart, but it very much remains to be seen what value should be attached to this result. It certainly appears that our respondents, despite our efforts to prevent this, found out what the purpose of this study was. This was apparent not only from the post-experimental session, but also from the fact that two respondents, on their initiative, made changes to the nature of the population groups referred to in the immunized standpoints. The stereotype “The French are hedonists” was for example converted to “The Dutch are stingy.” From an ecological validity point of view the experiment presented here is the most dubious in the series of all the studies we have carried out.⁷ Considering the potential corruptness of the data there is very little point in carrying out a qualitative study into this fallacy – or it would have to substantiate the assumed S-bias.

5.7 Conclusions

The fallacies that fall within the scope of the pragma-dialectical discussion rule for the opening stage and that are not specifically bound to problems related to the division of the burden of proof in mixed differences of opinion are invariably dismissed by ordinary arguers as unreasonable moves. Whether it concerns shifting the burden of proof, evading the burden of proof by introducing the standpoint as something entirely matter-of-course, evading the burden of proof by personally guaranteeing the rightness of the standpoint or evading the burden of proof by phrasing the standpoint so that it is immune to criticism, in all these cases the discussion moves concerned were deemed unreasonable by ordinary arguers in an absolute sense, whilst their sound counterparts were deemed reasonable (though it has all the signs that in the case of evading the burden of proof by immunizing the standpoint the result should be attributed to an experimental artifact, although it is in accordance with the expectations and is consistent with the previous study). These results are, all in all, a positive indication for the conventional validity of the obligation-to-defend rule.

With regard to the fallacy of shifting the burden of proof, it seems that the respondents have in their judgments of the reasonableness or unreasonableness of this fallacy explicitly made use of the obligation-to-defend rule, unlike in the case of the fallacies that fall within the scope of the rule for the confrontation stage. Even though the majority of the respondents are quite capable of verbalizing the fallacy of shifting the burden of proof, this does not mean that they do have the

⁷In retrospect, it was, from a methodological point of view, not such a good idea to bring up the fallacy described here (evading by immunization or its reasonable counterpart) in 1/3 of the dialogue fragments. It was clearly too much of a good thing. Furthermore, the respondents in this experiment were confronted with the fallacious character of evading the burden of proof, with the immunization of standpoints and also with reasonable counterparts where the non-quantified stereotype phrases were rephrased by the protagonist in ways such as: “I don’t mean all [X], but the average [X]” (or: “most,” or “the modal”). It remains to be seen if our respondents would have seen through the fallacious character of these moves without having this support.

abstract discussion rule at their command and make use of it in a generalizing sense when it comes to judging fallacies of an entirely different type which fall also within the scope of the same pragma-dialectical obligation-to-defend rule. The range of applications of the normative discussion rule on which the respondents say to have oriented themselves, therefore remains strictly confined to and is specifically bound to concrete examples of the fallacy of shifting the burden of proof. That the respondents particularly with regard to this fallacy are capable of verbalizing the obligation-to-defend rule – or equivalents thereof – has to be explained by the use of such phrases as “Can you explain that” and “Can you substantiate that?,” which act as succinct evocators for the discussion rule concerned. The results of the studies imply that the obligation-to-defend rule, just as was the case with the freedom rule, does not belong to the conscious normative-critical repertoire of our respondents that can be used in an abstract generalizing sense when judging different concrete phenomenal forms of unsound moves that can be viewed as instantiations of the same abstract category. Nevertheless, irrespective of whether it concerns shifting the burden of proof, evading the burden of proof by presenting the standpoint as self-evident or the fallacy of evading the burden of proof by personally guaranteeing the correctness of the standpoint, the respondents can in all cases clearly recognize and express where the deficient nature of the moves concerned can be traced to in an argumentative sense.