Maneuvering with the burden of proof: Confrontational strategies in dealing with political accountability

Andone, C.

Link to publication

Corina Andone
University of Amsterdam & ILIAS

MANEUVERING WITH THE BURDEN OF PROOF: CONFRONTATIONAL STRATEGIES IN DEALING WITH POLITICAL ACCOUNTABILITY

Abstract. In this paper, the author examines the burden of proof in the argumentative confrontations taking part in practices of political accountability. She does so by explaining how politicians maneuver strategically with the burden of proof in an attempt at winning the discussion in which they are involved. After making clear the role of the burden of proof in defining the difference of opinion in argumentative confrontations, the author outlines the constraints imposed by practices of political accountability on the burden of proof. Finally, she analyzes in detail a concrete case in which a politician maneuvers in such a way that his burden of proof is significantly diminished.

Keywords: argumentative confrontation, burden of proof, dialectical route, material and procedural starting points, political accountability, strategic maneuvering

1. Introduction[1]

In 1999 the European Commission led by Jaques Santer resigned following harsh criticism from a parliamentary committee of inquiry which examined alleged fraud and mismanagement. During the inquiry, the Commissioners had to provide information about their financial activities as well as explain and justify their decisions to the critical investigators appointed for this purpose. This process is viewed as a typical case of political accountability: An account-holder (the investigators) challenges an accountor (the Commissioners) to account for his political conduct.

The obligation to justify certain actions – known in argumentation theory as the 'burden of proof' – involves a commitment to argue if the acceptability of the actions is doubted. In practices of political accountability the burden of proof is a hallmark of such practices: In all cases politicians are expected to argue in response to critical scrutiny. Therefore, it is pertinent

and important to understand from an argumentative perspective the role of the burden of proof in dealing with political accountability.

In this paper, I concentrate from a pragma-dialectical perspective on argumentation on the burden of proof in the argumentative confrontations taking place in the practices at issue. My aim is to explain how politicians maneuver with their burden of proof in an attempt at winning the discussion when they have to give an account of their performance. In the first section, I will make clear the role of the burden of proof in defining the difference of opinion and the possibilities which exist in an argumentative confrontation of doing so favorably. In the second section, I will demonstrate that the burden of proof is subject to a number of constraints imposed by the conventions characterizing practices of political accountability. Finally, I will analyze a concrete case in which a politician maneuvers in such a way that his burden of proof is significantly diminished.

2. The role of the burden of proof in argumentative confrontations

The burden of proof – originally a legal concept from Roman law often referred to by the Latin term *onus probandi* – is in the pragma-dialectical approach to argumentation viewed as part of a critical testing procedure aimed at resolving a difference of opinion on the merits. To achieve this aim, a critical exchange of argumentative moves needs to take place between the protagonist of the standpoint at issue and an antagonist who has doubt as to the acceptability of this standpoint or even rejects it (van Eemeren & Grootendorst 1984, 2004).

The critical view of reasonableness advocated in the pragma-dialectical approach involves subjecting the standpoints to a regimented critical discussion. A critical discussion in the pragma-dialectical theory is given shape in an ideal model in which an outline is given of the moves that can make a contribution towards the envisaged purpose of the discussion at every stage of the resolution process. In the confrontation stage the discussion is initiated, and the difference of opinion manifests itself through the opposition between a standpoint and the non-acceptance of this standpoint. In the opening stage the discussion roles of the protagonist and antagonist are divided and the substantive and procedural commitments of the discussion are identified. In the argumentation stage the protagonist defends his standpoint against the critical responses of the antagonist. In the concluding stage the protagonist and the antagonist determine whether the

protagonist's standpoint has been successfully defended against the critical responses of the antagonist.

The burden of proof plays a vital role at every stage of the critical testing procedure. Despite what the name may suggest, the burden of proof is not pertinent only to the argumentation stage in which the actual 'proving' takes place, but to realizing the goals of all stages.[2] According to van Eemeren and Houtlosser (2002), the burden of proof is acquired in the confrontation stage, distributed over the parties and taken up in the opening stage, met by advancing argumentation in the argumentation stage, and finally discharged in the concluding stage.[3]

The pragma-dialectical approach to argumentation embraces a procedural view of the burden of proof (van Eemeren & Houtlosser 2002, van Eemeren 2010) in which this concept is regulative for the conduct of argumentation: it functions as "a procedural principle of rationality" (Rescher 1977) with the help of which the probative obligations in a discussion can be specified. Just like Rescher (1977, 2006), the pragma-dialecticians are of the opinion that the concept of burden of proof is a methodological tool for showing how the discussion unfolds in all stages. Whether he is engaged in defining the difference of opinion, agreeing on the starting points of the discussion, advancing arguments, or establishing the result of the discussion, the protagonist deals with certain aspects of the burden of proof in order to eventually resolve a difference of opinion on the merits.[4] In what follows, I will explain the role of the burden of proof in the confrontation stage in the simplest case of a non-mixed dispute, in which there is only one protagonist who advances a standpoint.

The goal of the parties in an argumentative confrontation is to reach a definition of the difference of opinion on the merits in agreement with the procedural and material starting points agreed upon in the opening stage. Doing so is vital to the rest of the discussion, because without such a definition the discussion cannot proceed adequately to the next stages. The burden of proof is one of the most important means used to contribute towards fulfilling the goal of this stage: It is an obligation that arises as a consequence of the need to respond to criticism against the standpoint if the protagonist is challenged to give such a response (van Eemeren & Grootendorst 1984, Houtlosser 2002).[5]

According to its essential condition, "advancing a standpoint counts as taking responsibility for a [...] position in respect of [an expressed opinion] O, assuming an obligation to defend the [...] position in respect of O if challenged to do so" (Houtlosser 2002: 171).[6] By taking on a burden of proof at the confrontation stage, the protagonist of a standpoint contributes to the

critical testing procedure, because in this way he helps define the difference of opinion.

In order to define a difference of opinion in the confrontation stage, arguers can follow various dialectical routes that lead to achieving the goal of this stage. A dialectical route represents the sequence of moves and countermoves instrumental to resolving ultimately a difference of opinion on the merits. All moves forming a dialectical route are analytically relevant, i.e. they are pertinent to resolving the difference of opinion at issue on the merits.[7]

Starting from the distribution of speech acts playing a role in an ideal critical discussion (van Eemeren & Grootendorst 1984: 105, van Eemeren 2010: 11), all possible dialectical routes of an argumentative confrontation can be determined. In this distribution, assertives are put forward to advance and maintain a standpoint, and illocutionary negations of assertives are used to retract a standpoint. Commissives and illocutionary negations of commissives are performed to indicate acceptance or non-acceptance of the standpoint, respectively. In case the protagonist's position is not fully clear, directives may be advanced to request 'usage declaratives' demanding clarifications, precizations, amplifications, etc. Finally, usage declaratives are advanced in reaction to the antagonist's directives.

In principle, unless the protagonist has already successfully defended the same standpoint against the same antagonist on a previous occasion, and unless he has given up his standpoint, three dialectical routes involve a burden of proof in an argumentative confrontation. These routes are outlined in Figure 1:

	Protagonist	Antagonist
Dialectical route I	Advances a standpoint	Doubts the protagonist's standpoint
Dialectical route II	Advances a standpoint Advances a usage declarative	Requests a usage declarative
Dialectical route III	Advances a standpoint Maintains a standpoint	Doubts the protagonist's standpoint

Figure 1. Dialectical routes involving a burden of proof in a non-mixed discussion

By following *dialectical route I*, the protagonist of a standpoint takes upon himself an obligation involving a burden of proof which consists in a commitment to substantiate the standpoint and thus engage in a discussion over its tenability. If the protagonist refuses to take on such an obligation, the

discussion cannot be conducted: The difference of opinion that is at issue can only be resolved if the protagonist accepts to defend his standpoint after being criticized. This obligation holds until the protagonist retracts his standpoint or until the antagonist no longer doubts it.

By following *dialectical route II*, the protagonist makes clear which issue is at stake in the standpoint after a request for clarification has been issued. In providing a clarification of his standpoint, the protagonist maintains his commitment to defend his standpoint pertaining to the issue concerned if challenged. Although clarifying the standpoint is not an argumentative move in the strict sense, doing so plays a role in defining the difference of opinion because by creating clarity a proper critical testing procedure is ensured. After all, the dialectical goal of the confrontation stage is to define the difference of opinion clearly (van Eemeren & Houtlosser 2002: 22), and this goal can be achieved only if the standpoint and the attitude towards the opinion expressed in the standpoint are made clear. The obligations related to the burden of proof can be fulfilled only if clarity is obtained in this regard.

By following *dialectical route III*, the protagonist upholds the obligation involving a burden of proof because, by maintaining his standpoint, he wishes to make explicitly clear that despite the antagonist's doubts he regards himself as still committed to the acceptability of the proposition expressed in his standpoint. Because he believes this to be the case, the protagonist shows that he is ready to defend his standpoint and thus live up to his obligation with regard to the burden of proof. By maintaining his standpoint, the protagonist makes explicitly clear that he has not retracted his standpoint and thus emphasizes his commitment to remain engaged in a discussion in which the tenability of his standpoint is tested. As will be shown in the case study, such emphasis plays a role in the protagonist's attempt at winning the discussion. Unlike in dialectical route I, in following this route the protagonist reinforces his belief in the acceptability of his position and thus foregrounds that he is ready to defend it.

Unlike in an ideal argumentative confrontation, in argumentative practice arguers strive not only to satisfy their dialectical obligations related to the definition of the difference of opinion. They also have a rhetorical interest in defining the difference of opinion to their own advantage in order to win the discussion in which they are involved. In trying to achieve a balance between their dialectical and rhetorical interests – necessary in order to resolve the difference of opinion *on the merits* – participants engage in *strategic maneuvering* (van Eemeren & Houtlosser 2002, van Eemeren 2010). This view suggests that in an argumentative confrontation the protagonist always ma-

neuvers with the burden of proof in order to increase his chances of winning the discussion in which he is involved.

In order to understand how the protagonist of a standpoint maneuvers to his own advantage, it needs to be determined how the three dialectical routes involving a burden of proof can be realized strategically in practice. Dialectical routes I and III – in which the protagonist advances a standpoint and maintains it – can be followed strategically in such a way that the defense of the standpoint will be made easier. Van Eemeren and Houtlosser (2002) point out that in such a case the protagonist can maneuver by either limiting or broadening the scope of the standpoint in a certain way, depending on what is most beneficial at that point in the discussion. By doing so, the defense of the standpoint will be easier or – even more to the protagonist's advantage – no defense will be necessary at all. Viviane Reding, for example, the Vice President of the European Commission, did not have to defend her standpoint that "All European citizens can contribute to maintaining democracy by taking part in elections" when she was interviewed in 2009 on EuroNews. Although in principle she had a burden of proof for her standpoint, the obligation to defend her view about *all* European citizens could not be imposed on her. The scope of the standpoint was so broad that no one expected her to argue for each and every European citizen. Moreover, a defense of the standpoint is not expected because no reasonable person can deny the importance of voting in a democracy. This idea is generally accepted and would not be criticized by the citizens of Europe.

Dialectical route II – in which the protagonist makes his standpoint clear after a request for clarification has been issued – involves strategic maneuvering which concerns the way in which the information demanded by the antagonist is quantified. This route can be followed strategically by offering either too little or too much information that provides the required clarification. In both cases, the commitment to defend a standpoint is weakened and the burden of proof is hence limited. For example, in 1999 when they were asked to make clear their political activities, members of the European Commission led by Jacques Santer provided a huge amount of information to the parliamentary committee of inquiry looking into alleged fraud and mismanagement of the Commission. In this way, the parliamentary committee was led into confusion and could not ask critical questions related to all aspects pertinent to the Commission's performance. As a consequence, the Santer Commission had no burden of proof for the adequacy of some of their decisions and policies. A similar outcome was obtained in the same year when the British Department of Health had to clarify the

measures taken to prevent 'mad-cow disease.' Unlike the Santer Commission, which gave too much information, the British Department of Health provided too little information about the measures they had taken, claiming that they wanted to protect consumers from knowing all possible negative effects of the disease. In this way, the acceptability of some of their measures could not be put to the test by the relevant authorities, and those responsible could avoid fulfilling the burden of proof arising from taking certain measures.

Rhetorical choices such as those outlined are made with a view to obtaining success in the specific context in which the discussion takes place. Such choices are often dictated by the institutional conventions characterizing the specific argumentative practice (van Eemeren 2010). In the next section I will determine how realizing the dialectical goal of defining the difference of opinion and at the same time its rhetorical counterpart of doing so favorably are constrained by the characteristics of the practices of political accountability.[8] The question I will answer is: what are the possibilities for confrontational maneuvering with the burden of proof in practices of political accountability?

3. Possibilities for maneuvering in dealing with political accountability

As their name already suggests, practices of political accountability consist of discussions in which a political actor (the accountor) gives an account, i.e., explains and justifies his conduct to a forum (the account-holder) (Bovens 2006: 9). Political discussions in which an account is provided may occur in a variety of settings, ranging from highly formalized and institutionalized practices – such as meetings of parliamentary committees of inquiry – to informal and less strictly institutionalized practices – such as political interviews.

The *institutional point*[9] of all practices of political accountability is to offer those who have a political function – such as ministers, parliamentarians, and party members – an opportunity to discuss the quality of their actions, decisions, and policies, and the reasons for carrying out an action in a certain way.[10] Such accountability discussions take place with a view not only to check the adequacy of political actions but also, and more importantly, to explain and justify them.[11] Eventually, in cases of malperformance sanctions are imposed on the actor, or he is rewarded in the case of adequate performance (Bovens 2006: 9). Sometimes, when the account-holder

does not have the full authority to do so, he prepares the ground for sanctions being imposed by others who have the required authority. For instance, a journalist cannot ask a politician to resign because it turns out in an interview that the politician has acted improperly, but the politician's peers may do so afterwards, based on the interview.

In practices of political accountability argumentation plays a fundamental role because this is the only acceptable means available to fulfill the obligation to justify the political performance. Preceding the actual arguing, the political actor has to inform the account-holder about the way in which he carried out his tasks, about the results obtained and about the procedures followed. All studies dealing with such practices written from a political and legal perspective emphasize that providing information needs to be complemented by reason-giving, so that political discussions count as true instances of accountability (e.g., Strøm 2000, Mulgan 2003, Bovens 2006, Verhey 2009). In what follows, I will outline how certain characteristics going with the informative and argumentative nature of political accountability constrain the maneuvering allowed to the participants with regard to the burden of proof. These characteristics pertain to the propositions for discussion, the roles adopted by the parties, the kind of difference of opinion at issue and the starting points regulating accountability practices.

At the main level of the argumentative exchange, the propositions for discussion usually vary depending on the politician's role, position and political portfolio. They can range from descriptive propositions about a factual state of affairs ('The decision I took last week is in accordance with Article 110 of the Parliamentary Rules of Procedure'), to evaluative propositions in which a quality judgment is made ('This policy is very good'), and prescriptive propositions in which a proposal is made ('This measure should be taken'). In practice, the propositions presented for discussion in political accountability practices usually pertain to more than one issue and to various aspects of the same issue. Depending on the circumstances, politicians are expected to explain and justify their actions from a political perspective as well as from a legal, administrative, and social viewpoint, so that the demands of all people possibly affected by their conduct are taken into account. Although in theory just one issue can be the subject of discussion, in practice this is rarely, if ever the case. Account is almost always rendered to many people at once, such as voters, political parties, courts, auditors, peers, interest groups, and other stakeholders in view of 'the problem of many eyes' (Bovens 2006: 15–17). As a rule, various aspects of the same issue – such as the consequences of an action and the means employed to

carry it out – are under discussion. Thus, discussions in which politicians are held to account for their conduct originate, more often than not, from a multiple dispute.

Irrespective of the proposition at issue, a difference of opinion always arises in accountability practices because of doubt on the part of the account-holder as to whether the politician has acted properly. It is precisely the role of the account-holder to ask critical questions that require the politician to explain and justify his performance. In response to such doubt, the politician is supposed to advance argumentation, thus supporting his standpoint concerning one or more of the propositions discussed. For example, when the Members of the European Commission had to account for the measures they took concerning mad-cow disease, they did so against a background of doubts and criticisms about the adequacy of their measures. Various account-holders (e.g., journalists, stakeholders, committees of inquiry) advanced critical questions which the politicians had to answer by explaining the necessity and appropriateness of their measures.

The account-holder imposes sanctions on the political actor and usually motivates these sanctions. The sanctions are presented in the form of a standpoint (such as 'Person X needs to resign') which is supported by the reasons motivating the sanctions (such as '[Because] person X has acted illegally'). For example, the committee of inquiry of the European Parliament investigating the mad-cow disease advanced a standpoint according to which 'European Commissioners responsible for taking measures to protect citizens have to resign.' This sanction was supported by the argument stating that 'The measures taken to protect the citizens were inappropriate although the Commissioners have been asked three times to revise their measures.'[12]

This presentation of the positions of the parties in an accountability discussion suggests that in most cases the dispute is qualitatively multiple and mixed.[13] Nevertheless, although it is rare, a single non-mixed difference of opinion that does not take the shape of a full disagreement but remains basic in the sense that the politician is the only party advancing a standpoint is not excluded. Despite this possibility, to do justice to argumentative reality I will analyze all discussions as mixed for two reasons. First, if he wants to impose sanctions that will not be disputed later, the account-holder supports his point of criticism with arguments which justify the negative evaluation of the politician's performance. In so doing, he advances a standpoint against the politician's standpoint and in this way a mixed dispute arises. Second, analyzing disputes as multiple mixed – instead of as single mixed and single non-mixed – does not affect in any way the politician's burden of proof.

Corina Andone

Political accountability is practiced in accordance with a number of
material and procedural starting points which apply to all stages of the dis-
cussion.[14] These starting points constrain the politician's obligations related
to his burden of proof as well as the account-holder's rights and obligations
in criticizing the politician's standpoints and arguments. For the purpose
of this paper, I concentrate on the starting points affecting the politician's
account-giving.[15]

In terms of the material starting points, politicians adhere to the
democratic and constitutional principles underlying their political activ-
ity (e.g. popular control, equilibrium of power, openness, integrity, etc.).[16]
The procedural starting points regulating the politician's account-giving
can be divided into two categories: (1) starting points which specify the
politician's obligations pertaining to his standpoints; and (2) starting points
which specify the politician's obligations in countering criticisms advanced
against his standpoints and arguments. The following outline is the presen-
tation of these starting points as given in Andone (2014: 10):

I. *Material starting points*

   (1) The participants adhere to democratic and constitutional values.

II. *Procedural starting points*

   The politician's obligations pertaining to his standpoints
   The protagonist of a standpoint pertaining to a proposition p
   (2) should provide information to the account-holder requesting so.
       This means, in principle, that the information is provided timely,
       that it should be reliable and sufficient for the purpose of the dis-
       cussion.[17]
   (3) should explain his political performance (decisions, actions, poli-
       cies) by making clear his motives, approach and purposes if re-
       quested to do so.[18]
   (4) should be able to show that his political performance is adequate
       when requested to do so.[19]
   *The politician's obligations in countering criticisms advanced against
   his standpoints and arguments*
   The protagonist of a standpoint pertaining to a proposition p
   (5) should provide extra information if requested to do so.
   (6) should, in principle, maintain his standpoints and arguments criti-
       cized by the antagonist.
   (7) should face consequences (a) if they are imposed upon him, and (b)
       if the consequences are not a matter of collective responsibility.

The rules specified under starting points (4) and (6) need further clarification. They relate to the politician's burden of proof in establishing the adequacy of his political performance. Rule (4) imposes on the politician an obligation to defend the adequacy of his performance when requested to do so. Nevertheless, the probative obligation imposed by this rule does not hold in all cases. It can be applied only in case the issue for discussion is not at the same time a *sub judice* matter (Verhey 2009). In the latter case it is perfectly legitimate for the politician to refrain from publicly providing a justification. Certain administrative matters too cannot be explained publicly if they involve secret financial details, just like matters that could have a negative impact on the public. This explains the strategy adopted by Members of the European Commission during the inquiry into the mad-cow disease: They justified concealing certain information concerning the quality of beef meat by mentioning possible risk perception by consumers.

Rule (6) obliges politicians to maintain their standpoints and arguments concerning the adequacy of their political performance during the account-giving. Politicians need to support and maintain a position claiming the adequacy of their actions even in cases when they are not fully convinced of the alleged adequacy. Such is the case when politicians give an account on behalf of their political party or the government. In Great Britain, for example, the politicians' actions are constrained by the collective responsibility which "all ministers in the government (whether members of the Cabinet or not) must take [...] for all government policy" (Tomkins 2008: 247). The consequence of violating this constitutional convention can even be that the politicians are forced to leave office. A sense of such collective obligation applies very often to politicians serving in European institutions. On the one hand, they have to act in line with the integrationist policy driven by the interests of the Community by defending European policies, independently of any government (Wonka 2007: 170). On the other hand, politicians have to pursue policies in line with the regulatory *status quo* in their country, even when they disagree with the national views. This is so because more often than not politicians are appointed at the European level by their national governments with an eye for setting the agenda on which they vote and act (Wonka 2007: 174).[20]

The material and procedural starting points such as those outlined dictate to a great extent the maneuvering with the burden of proof in an argumentative confrontation when dealing with political accountability. These starting points impose institutional constraints on the way in which the dialectical and the rhetorical goal of the confrontation stage are realized in practice. They require that certain argumentative moves be advanced by

the politicians, but this can be exploited to the politician's favour. I will now determine the strategic possibilities for maneuvering with the burden of proof in an argumentative confrontation in the three dialectical routes presented involving a burden of proof outlined in Figure 1 in Section 2.

In following dialectical route I – in which the protagonist advances a standpoint which is afterwards doubted – a politician who wants to have a chance of obtaining a favourable outcome of the discussion needs to act in line with starting points (1), (3), and (4). Starting point (1) obliges the politicians dealing with political accountability to adhere to democratic and constitutional values in order to be perceived as credible and trustworthy. Although acting in line with this starting point is most probably not enough for winning the discussion, doing so creates the background for an advantageous meeting of the burden of proof. Practice shows that politicians who want to convince the public of the appropriateness of some of their measures, for instance, will always underline the legal and democratic character of their decisions (Mulgan 2003).

Starting point (3) imposes an obligation on the politicians to justify the motives, approach, and purpose of their political conduct. Although only one of these aspects is usually explicitly criticized by the account-holder, in practice it is often the case that account is rendered about all three aspects. A politician who wants to maneuver to his own advantage almost always needs to do so in such a way that all 'eyes' are likely to be satisfied. For example, when the President of the European Commission is involved in account-giving with the European Parliament, he addresses the parliamentarians and at the same time the Commissioners and the public for whom decisions are taken (Bovens 2006: 22). Because of the varied audience, the President usually defends the motives, approach, and purpose of his performance in trying to respond to as many doubts as possible of the various account-holders.

Starting point (4) requests politicians to defend and maintain at all times the adequacy of their political decisions, actions, and policies. Although concessions in which wrong-doing is admitted are certainly sometimes made, this needs to be done in a way that does not seem damaging. The Santer Commission, for instance, admitted some lack of clarity regarding their financial operations, but they did not withdraw their position in which they advocated proper political conduct. If they had admitted mismanagement, they would have lost the discussion immediately and would have been sanctioned.

In following dialectical route II – in which a usage declarative is advanced after the politician's standpoint is criticized for being unclear – the

strategic maneuvering with the burden of proof is mainly affected by starting point (2). This starting point imposes the provision of information that is timely, reliable, and sufficient for the purpose of the discussion. The obligation imposed on political actors by this starting point can be strategically exploited in various ways. The European Commission, for instance, exploited it when they were held to account by a European parliamentary committee of inquiry investigating the implementation of the European Directive 92/96/EEC regarding financial undertakings by its competent authorities in the UK. This investigation came after various British financial institutions were accused of misconduct. When the Commission provided information about the implementation of the directive, this information proved unreliable because it concerned the immediate transposition of the directive, whereas it should have covered a longer period in which the implementation of the directive had been evaluated over time. In the same case, the European Commission claimed to have provided all available information, but this proved insufficient because it was based on conclusions drawn by contracted consultants who carried out an incomplete and poor quality study.

Finally, in following dialectical route III – in which the standpoint is maintained after being criticized – starting point (6) plays an important role. It requests politicians to uphold their obligation concerning the burden of proof. Therefore, the strategies to which politicians can resort are similar to those in following dialectical route I involving advancing a standpoint after being criticized. The burden of proof related to maintaining a standpoint is not different than the burden of proof acquired in advancing a standpoint, except that the protagonist underlines that he still believes his standpoint to be acceptable despite the antagonist's repeated criticism.

4. Maneuvering with the burden of proof in practice

Having clarified the procedural view of the burden of proof and the strategic possibilities for confrontational maneuvering with the burden of proof in dealing with political accountability, I will analyze a concrete example in which a politician tries to win the discussion with an interviewer. I have chosen a fragment from a political interview because these practices are a typical instance of political accountability: An interviewer (i.e., account-holder) questions a politician (i.e., accountor) by advancing criticism concerning the legitimacy of his performance (Montgomery 2007, Andone 2013). The politician is expected to explain and justify the acceptability of his political conduct. Although in such practices sanctions are not

imposed by the interviewer, a background is created for facing consequences later from those with the required authority (Mulgan 2003).[21]

The exchange is taken from an interview in July 2012 by a journalist from the English version of *Spiegel Online* with the German European Commissioner Günther Oettinger.[22] The interview instantiates a qualitatively multiple dispute in which the participants hold standpoints on several issues concerning financial aspects of the European Union. In the fragment the central issue concerns Eurobonds, a highly controversial solution for the European sovereign debt crisis:

> *Spiegel*
>
> You yourself said some time ago that euro bonds should be "considered as a final component of the euro rescue."
>
> *Oettinger*
>
> I think that euro bonds are conceivable, provided all other necessary conditions are met. As a member of the European Commission, I support the draft proposal for various types of euro bonds that we published at the end of last year. But first we have to transform the common economic and currency zone into a real political union.
>
> *Spiegel*
>
> To that end, the presidents of the European Council, the European Commission, the Euro Group and the European Central Bank have made extensive proposals. However, the German government promptly criticized the document, saying it was biased.
>
> *Oettinger*
>
> I feel that the proposals are an outstanding basis for engaging in the structural debate about tomorrow's Europe at all levels in the coming weeks. We are talking about a banking union, common economic policy, more democracy and democratic control and, ultimately, the founding of the United States of Europe.

At the time of the interview, discussions in the European Union about Eurobonds were common due to the controversy surrounding them: these bonds allow indebted states to borrow funds at good conditions with the support of richer states. Germany for one is not enthusiastic about this proposal of the European Commission to solve the financial problems of poorer countries.[23]

In his first remark, the interviewer quotes Oettinger's position on Eurobonds when he was a politician in his own country: "Eurobonds are a final component of the euro rescue." Because as a European Commissioner Oettinger is known to support Eurobonds, the interviewer suggests with this

remark that his current position is apparently inconsistent with the skeptical attitude manifested before. Therefore, the journalist's words constitute an indirect challenge imposing two kinds of commitments on Oettinger. The first is a commitment to explain and clarify his standpoint, because by accusing Oettinger of being inconsistent, the journalist intends minimally to obtain a clarification of Oettinger's positions on the issue of Eurobonds and an explanation for his change in view.[24] The procedural starting points (2), (3), and (5) make clear that information and clarification are required when dealing with political accountability, because they make up the background against which the critical testing of standpoints can take place. The second commitment imposed on Oettinger, grounded in procedural starting point (4), involves a burden of proof consisting of the obligation to provide a justification of his support for the introduction of Eurobonds.

In response to the interviewer's challenge, under the restrictions imposed by starting points (4) and (6), Oettinger maintains his support for Eurobonds, because acting differently exposes him to criticism and sanctions from other European Commissioners. At the same time, Oettinger cannot diverge from the contrary German view, because national interests need to be defended. In order to balance his European with his national interests, Oettinger defines the difference of opinion on Eurobonds in a way that makes his burden of proof as clear as possible and also easier to meet later. First, he makes clear that his standpoint is limited, so that no burden of proof can be put on his shoulders that exceeds this scope: *As a member of the European Commission, I support the draft proposal for various types of euro bonds that we published at the end of last year.* With this formulation, the support for Eurobonds is limited to "the draft proposal for various types of euro bonds," and Germany's opposition which the journalist mentioned earlier in the interview is left aside. Second, Oettinger conditions his support in the following way: *But first we have to transform the common economic and currency zone into a real political union.* The initial assertive *I think that euro bonds are conceivable* involving a strong commitment to support Eurobonds is weakened by *provided all other necessary conditions are met.* By implying that his position should not be discussed before all other conditions are satisfied, such as *transforming the common economic and currency zone into a real political union*, Oettinger suggests that he only has a burden of proof at a later stage of the discussion.

In reply, the journalist explains that efforts have already been made to create "a real political union," because *to that end, the presidents of the European Council, the European Commission, the Euro Group and the European Central Bank have made extensive proposals.* He also reminds

Oettinger that Germany had opposed all these proposals. In order to avoid taking on a burden of proof for a position for which he does not have strong arguments, Oettinger counters the journalist's remark by qualifying all efforts for a political union as a 'basis' for further actions. His individual responsibility involving an obligation to support Eurobonds is turned into a collective obligation (*we are talking here*), which obviously he cannot fulfill alone.

In his maneuvering, Oettinger follows the three dialectical routes involving a burden of proof in the confrontation stage: (I) he advances a standpoint supporting Eurobonds, which is afterwards criticized by means of an accusation of inconsistency; (II) he clarifies his position after a request for clarification is advanced implicitly in the accusation; and (III) he maintains his support for Eurobonds. In following dialectical route I, Oettinger shows a strong commitment to defend his standpoint after being challenged (*I think that; I support*), and in taking dialectical route II he makes clear that the scope of his standpoint is restricted (*I support the draft proposal*). In following dialectical route III, conditions are imposed and a collective sense of responsibility is underlined (*first we have to; we are talking here*). By maneuvering in this way, Oettinger strategically moves from a strong burden of proof to a weakened commitment to defend his standpoint and finally to showing that he has no burden of proof yet because other conditions need to be fulfilled first. Oettinger exploits the various constraints imposed on him by the starting points regulating practices of political accountability so that his chances of being perceived as credible and trustworthy, and ultimately win the discussion in which he is involved, are considerably increased.

5. Conclusion

This paper explains the possibilities for confrontational maneuvering with the burden of proof in dealing with political accountability. The pragma-dialectical procedural view of the burden of proof has served to understand the role it plays in defining the difference of opinion, and the possibilities for doing so favorably. The conventions characterizing practices of political accountability have been shown to constrain the maneuvering at issue. Finally, the analysis of a fragment from a political interview has illustrated how the maneuvering takes place in practice.

Because the burden of proof plays an integral part in confrontational maneuvering, identifying its role at this stage is a precondition for understanding practices of political accountability. With a view to determining

the role of the burden of proof in maneuvering in other discussion stages, the insights provided here need to be taken as a point of departure. The institutional constraints on the maneuvering can serve to specify more concretely which limitations are imposed in each case in which political accountability is at issue. The analysis of the politicians' maneuvering with the burden of proof can be extended by providing a sustained assessment of its quality. To this purpose, precise criteria need to be developed that indicate when certain norms of reasonableness have been violated.

N O T E S

[1] I would like to thank Frans van Eemeren for his detailed and careful comments on an earlier version of this paper. I am moreover grateful to two anonymous reviewers for their useful remarks.

[2] Based on van Eemeren and Houtlosser (2002), I explain elsewhere (Andone 2014) in detail the methodological role of the burden of proof in every discussion stage.

[3] Tseronis (2009: 81–104) explains this view of the burden of proof by comparing the pragma-dialectical view with other approaches to argumentation.

[4] Rescher (1977, 2006) shows that the concept of burden of proof is fundamental to reaching the goal of a process of controversy. He makes a distinction between 'the probative burden of an initiating assertion' (Rescher 1977: 27, later referred to as 'the probative burden of an original assertion' (Rescher 2006: 15)) and 'the evidential burden of further reply in the face of contrary considerations' (Rescher 1977: 27, later called 'the dialectical burden' (Rescher 2006: 16)). In Rescher's view, the second type of burden of proof takes the argument forward in the light of evidence and counterevidence.

[5] Unlike authors such as Rescher (2006) and Kauffeld (2007), who believe that a burden of proof reflects an obligation that a speaker incurs as a consequence of making an assertion, pragma-dialecticians favor a view according to which simply putting forward an assertive is not enough. In their account, in line with the Searlean view (1969), only assertives which are met with doubt or criticism – and thus become standpoints – involve probative obligations.

[6] Following the principle of externalization – according to which judgments are to be made on the basis of the externalized commitments – only those objections need to be dealt with by the protagonist that are advanced in the discourse, whether explicitly, implicitly or indirectly (van Eemeren & Houtlosser 2002: 18).

[7] A sequential representation of the argumentative moves indicating the dialectical routes that can be followed at a particular stage of a critical discussion takes the form of a dialectical profile (van Eemeren, Houtlosser & Snoeck Henkemans 2008). For an outline of the dialectical profiles of all discussion stages, see van Eemeren, Houtlosser & Snoeck Henkemans (2007).

[8] In Andone (2014) I discuss in detail the characteristics of practices of political accountability. This section is based on the conclusions drawn in this earlier article.

[9] The institutional point is understood as defined by van Eemeren (2010: 140).

[10] Sometimes the subject of discussion is the politicians' lack of action (Mulgan 2003).

[11] Curtin and Nollkaemper point out that accountability is traditionally understood as "a retrospective process that involves giving an account of prior conduct. However, this

view of accountability is being increasingly challenged by approaches that argue for a more participative and ongoing process of accountability" (2005: 8). More attention is currently paid to connecting past and future conduct, especially in cases in which the purpose of holding to account is to prevent certain things from happening. Curtin (2007: 525) refers also to *dumque* accountability, which involves holding an actor to account during the process of taking a decision or action. There are certain institutional contexts in which only one such form of accountability is allowed. In some parliamentary committees of inquiry in the European Union, for example, politicians only have retrospective probative obligations, because they have to explain and justify what they have already done (Shackleton 1998).

[12] The account-holder advances his own standpoint especially in cases of political accountability taking place publicly. Usually, he then acts on behalf of the public – a journalist for instance is supposed to always ask questions that the public would like answered (Andone 2013) – and takes a more critical attitude in order to ensure that the public's concerns are dealt with. It should be clear that practices of political accountability are in most cases public, but they may remain 'behind closed doors,' for example when courts or auditors act as account-holders (Mulgan 2003, Bovens 2006).

[13] For a detailed account of this and various other types of disputes, see van Eemeren, Houtlosser and Snoeck Henkemans (2007: 53–62).

[14] For the distinction between material and procedural starting points, see van Eemeren and Houtlosser (2002) and van Eemeren (2010).

[15] See Andone (2014: 10) for a detailed overview of the account-holder's rights and obligations in criticizing politicians.

[16] For a more detailed discussion of the importance of democratic and constitutional values and how they can ensure accountability, see Bovens (2006: 27–29).

[17] Starting point (2) is derived from the characteristic of political accountability which concerns 'the proper provision of information' (Mulgan 2003, Bovens 2006). Such information can be provided before the politician is held to account, for example by sending information in advance in the form of reports.

[18] Starting point (3) is formulated in line with the feature of political accountability which imposes the provision and demand of explanations in 'the information phase' before 'the debate phase' can start (Bovens 2006).

[19] Starting points (4) and (6) are based on the view that a politician who has carried out an action has done so because he believes that his action is adequate. He can be held committed to this belief because he has allegedly acted in line with the democratic and constitutional values. By arguing that his political performance is adequate, the politician should be able to show also that the consequences of a particular action are adequate.

[20] Oliver (2009: 19–20) discusses the responsibility of a political body not to reveal disagreements among its members, which means that decisions made by that body are supposed to have been unanimously supported. Van Eemeren and Garssen (2011) show by means of 'the European predicament' how European Parliamentarians argue in trying to reconcile the possible tension between supporting national interests and European interests at the same time.

[21] A famous case in point is the 1997 interview on the BBC *Newsnight* program in which Michael Howard, former Home Secretary, denied any involvement in the decision to fire a prison official made after someone escaped from prison. After repetitive questioning, Howard had to admit wrongdoing and resigned the day after the interview. Montgomery explains that "not only may the interviewee be held to account within the interview for actions and words prior to it; but it is also the case that the interview may generate material that can be used subsequently in its aftermath for accountability purposes" (2007: 155).

[22] In Andone (2014) I analyzed this fragment to illustrate how a burden of proof is taken on in a political interview. In this article, I concentrate on the strategic maneuvering involved in this case.

[23] The information about the background of the discussion on Eurobonds is provided in the part of the interview preceding this fragment.

[24] In Andone (2013, Chapter 2), I show that the minimal perlocutionary effects of accusations of inconsistency are to obtain an understanding and clarification of the views of the person accused.

R E F E R E N C E S

Andone, C. (2013). *Argumentation in Political Interviews. Analyzing and Evaluating Responses to Accusations of Inconsistency.* Amsterdam/Philadelphia: John Benjamins.

Andone, C. (2014). The burden of proof in practices of political accountability. In Saftoiu, R., I. Neagu & S. Mada (Eds.), *Persuasive Games in Political and Professional Dialogue.* (forthcoming). Amsterdam/Philadelphia: John Benjamins.

Bovens, M. (2006). Analysing and assessing accountability: A conceptual framework. *European Law Journal 13*(4), 447–468.

Curtin, D. (2007). Holding (quasi-) autonomous EU administrative actors to public account. *European Law Journal 13*(4), 523–541.

Curtin, D. & Nollkaemper, A. (2005). Conceptualizing accountability in international and European Law. *Netherlands Yearbook of International Law XXXVI*, 3–20.

Eemeren, F. H. van. (2010). *Strategic Maneuvering in Argumentative Discourse. Extending the Pragma-dialectical Theory of Argumentation.* Amsterdam/Philadelphia: John Benjamins.

Eemeren, F. H. van & Garssen, B. (2011). Exploiting the room for strategic maneuvering in argumentative discourse. Dealing with audience demand in the European Parliament. In F. H. van Eemeren & B. Garssen (Eds.), *Exploring Argumentative Contexts* (pp. 43–58). Amsterdam/Philadelphia: John Benjamins.

Eemeren, F. H. van & Grootendorst, R. (1984). *Speech Acts in Argumentative Discussions. A Theoretical Model for the Analysis of Discussions Directed towards Solving Conflicts of Opinion.* Dordrecht: Foris Publications.

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

Eemeren, F. H. van & P. Houtlosser. (2002). Strategic maneuvering with the burden of proof. In F. H. van Eemeren (Ed.), *Advances in Pragma-dialectics* (pp. 13–28). Amsterdam/Newport News, Virginia: Sic Sat/Vale Press.

Eemeren, F. H. van, Houtlosser, P. & Snoeck Henkemans, A. F. (2007). *Argumentative Indicators in Discourse. A Pragma-dialectical Study*. Dordrecht: Springer.

Eemeren, F. H. van, Houtlosser, P. & Snoeck Henkemans, A. F. (2008). Dialectical profiles and indicators of argumentative moves. *Journal of Pragmatics 20*, 475–493.

Houtlosser, P. (2002). Indicators of a point of view. In F. H. van Eemeren (Ed.), *Advances in Pragma-dialectics* (pp. 169–184). Amsterdam/Newport News, Virginia: Sic Sat/Vale Press.

Kauffeld, F. J. (2007). The burden of proof: A macro or a micro level concept? In H. Hansen & R. Pinto (Eds.), *Reason Reclaimed* (pp. 65–73). Newport News, Virginia: Vale Press.

Montgomery, M. (2007). *The Discourse of Broadcast News. A Linguistic Approach*. London/New York: Routledge.

Mulgan, R. 2003. *Holding Power to Account. Accountability in Modern Democracies*. Palgrave Macmillan.

Oliver, D. (2009). Executive accountability: A key concept. In L. Verhey, Ph. Kiiver & S. Loeffen (Eds.), *Political Accountability and European Integration* (pp. 9–31). Groningen: Europa Law Publishing.

Rescher, N. (1977). *Dialectics. A Controversy-oriented Approach to the Theory of Knowledge*. Albany: State Universiy of New York Press.

Rescher, N. (2006). *Presumption and the Practices of Tentative Cognition*. Cambridge: Cambridge University Press.

Searle, J. (1969). *Speech Acts. An Essay in the Philosophy of Language*. Cambridge: Cambridge University Press.

Shackleton, M. (1998). The European Parliament's new committees of inquiry: Tiger or paper tiger? *Journal of Common Market Studies 36*(1), 115–130.

Strøm, K. (2000). Delegation and accountability in parliamentary democracies. *European Journal of Political Research 37*, 261–289.

Tomkins, A. (2008). Political accountability in the United Kingdom. In L. Verhey, H. Broeksteeg & I. van den Driessche (Eds.), *Political Accountability in Europe: Which Way Forward?* (pp. 243–269). Europa Law Publishing.

Tseronis, A. (2009). *Qualifying Standpoints. Stance Adverbs as a Presentational Device for Managing the Burden of Proof*. Utrecht: LOT.

Verhey, L. (2009). Political accountability: A useful concept in EU inter-institutional relations? In L. Verhey, Ph. Kiiver & S. Loeffen (Eds.), *Political Accountability and European Integration* (pp. 55–70). Groningen: Europa Law Publishing.

Wonka, A. (2007). Technocratic and independent? The appointment of European Commissioners and its policy implications. *Journal of European Public Policy 14*(2), pp. 169–189.