

May 22nd, 9:00 AM - May 25th, 5:00 PM

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Commentary on: Sheldon Wein’s “Exploring the virtues (and vices) of zero tolerance arguments”

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1. INTRODUCTION

Wein’s paper provides an insightful analysis of the concept of Zero Tolerance (henceforth: ZT) policies by defining their main characteristics in legalistic terms. We thus gain a comprehensive overview of what (quasi-)legal procedural requirements a public policy should meet to be considered a ZT policy. As Wein argues, these requirements constitute a set of “stock issues” of sorts that a supporter of a ZT policy should address and justify to make a strong case for implementing such a harsh measure. In this way, we can understand what a “good ZT argument” may look like and call those who advance it to account. This is a serious advantage of Wein’s analysis – he deals with a problem of immediate social importance, that is, with something that many abstract considerations of argumentation theory remove us from.

While I have little disagreement with what is said in this paper, I will reconstruct and problematize *implicit* elements of Wein’s account – elements that are central from the perspective of argument analysis and evaluation, yet are either taken for granted, not taken into consideration at all, or are discussed in his earlier work on ZT fallacies (Wein, 2012). In so doing, I will follow Wein’s intention to address “the problem of how to characterize zero tolerance arguments and what constitutes validity for such arguments (beyond just the analytic claim that it is not logically possible for the argument to have only true premises coupled with a false conclusion)” (p. 2).

2. ZERO TOLERANCE ARGUMENTS AND PRACTICAL REASONING

To start with, ZT argument is introduced as a distinctive argument “type” or “form” – so what precisely is this form? Well, there is not much of a “formal” analysis in the paper, not that there has to be, but some clarification of this basic definitional quality can be of help. In one footnote (fn. 3, p. 2), Wein mentions that ZT arguments which he finds valid, but still guilty of the *petitio principii* fallacy, “typically” take the following form:

- Premise: We want to do as much as we can to keep people from x-ing.
Premise: Nothing does more to prevent x-ing than having no tolerance for x-ing.
Conclusion: Therefore, we should adopt the following zero tolerance policy:
Absolutely no x-ing.

This “typical form” of a ZT argument (I would say – any ZT argument, not just a circular one) seems to be a rather straightforward instantiation of a well-known form of argument, that of practical reasoning (aka pragmatic argumentation). This basic form – as defined by philosophers (Broome, 2001; Gauthier, 1963) and argumentation scholars (Feteris, 2002; Walton, 2007) – looks more or less like this:

- I. Y is desirable.
II. X leads to Y.
Ergo:
III. We should do X.

Note that the basic variations of the scheme depend on the formulation of the causal premise:

- II. X leads to Y.
II.1 X is a *necessary* means to achieving Y.
II.2 X is a *sufficient* means to achieving Y.
II.3 X is a means *conducive* to achieving Y.

Or simply:

- II.4 X is *the best* means to achieving Y.

Again, what do we mean by “the best”? Well, to crudely simplify things, let us assume that we can distinguish three different types of “bestness” based on three well-known varieties of ethical approaches:

- II.4.A X is the most *virtuous* thing to do with regards to achieving Y.
II.4.B X best follows our *moral rules and obligations* in achieving Y.
II.4.C X is the most *cost-effective* means to achieve Y.

Now, using Wein’s example, we can see that his ZT argument is a sub-form of practical reasoning that employs II.4.C as a causal premise:

- I. Preventing kids from overusing drugs (=medicines) is desirable.
II.4.C Zero tolerance policy towards bringing drugs to school is “the most cost-effective” means of preventing kids from overusing drugs.
Ergo:
III. We should introduce ZT policy towards bringing drugs to school.

First, we may want to note that, formally speaking, there is nothing fishy about this argument (it is valid, and is not circular). Second, this argument type or form covers a wide range of practical reasoning based on the means-efficiency (aka *instrumental*

or *prudential* practical reasoning), not just ZT arguments. Therefore, if we agree with Wein that it is “a distinctive type of argument [...] according to the conclusion the arguments reach, *viz.*, that we should have zero tolerance for a certain activity or behaviour” (p. 1), funny things can happen. Indeed, based on this criterion, we can build an infinite set of distinctive “argument types”. I am tempted to give but one example:

- I. Preventing kids from overusing drugs is desirable.
- II.4.C Zero point five percent tolerance policy towards bringing drugs to school is “the most cost-effective” means of preventing kids from overusing drugs. (Empirical evidence shows condoning 1 in 200 cases is the most efficient way to go.)
- Ergo:
- III. We should introduce a 0.5% tolerance policy towards bringing drugs to school.

Following Wein’s criteria, this case would instantiate “a distinctive type of argument” and would also be fallacious, when the empirical studies were mistaken. Next to a “Zero Tolerance Fallacy” we would have then a “Zero-point-five-percent Tolerance Fallacy” (admittedly, Wein’s criterion of frequent use is not fulfilled, but how we do know about these frequencies anyways?). What seems to be lacking in Wein’s account is a clear definition of the “formal” criteria that would allow us to consistently distinguish between distinct forms or types of argument. Otherwise, we may end up dividing the realm according to different kinds of differences (such as differences of argument form / type / scheme vs. differences in argument content / matter / conclusion).

3. FALLACIES OF WHAT?

Having this in mind, let us look again at Wein’s criteria and see how they account for ZT fallacies. Following an important trend in argumentation theory, Wein understands fallacies as bad (unreasonable, flawed) counterparts of good arguments by virtue of violating some norms of argumentation goodness. What are these norms? Taking into account that Wein sometimes talks about “logical fallacies” as the primary genus of argumentation problems, it is not surprising to see (logical) invalidity as the first of the five “individually necessary” conditions for a fallacy. So what is this (in)validity about? As we have seen, Wein claims that “some arguments for zero tolerance arguments beg the question, and though they are valid they certainly are not good arguments” (p. 2). We thus have: 1) “good” arguments (free of all five “fallacy conditions”, including invalidity); 2) “not good” arguments (valid, but meeting one of the remaining four fallacy conditions); and 3) “fallacious” arguments (meeting all the conditions). We seem to be getting at a multi-criterion approach to fallacies. But are we? At times things seem simpler, for instance when Wein claims that “one commits the zero tolerance fallacy when one uses an invalid argument that has the conclusion that we ought to have a zero tolerance policy for some behaviour or practice” (p. 1).

Such a definition hints at an elegant logical account – but all the fallacious examples given by Wein, and even our 0.5% tolerance argument, are easily made valid, at least on the grounds of traditional two-valued propositional logic:

((Y is desirable) \wedge (X is the most *cost-effective* means to achieve Y)) \Rightarrow (We should do X)
 ((Y is desirable) \wedge (X is the most *cost-effective* means to achieve Y))
 Ergo:
 (We should do X)

If premises were true, the conclusion would surely be too. So we are not dealing here with a logical / argumentative problem of validity in any strict sense.

Perhaps, then, Wein discusses an *au fond* ethical issue and fallacies as violations of ethical norms? Recall that fallacious ZT arguments “undermine the purpose of the policy *or* lead to unwanted consequences *or* violate someone’s rights *or* some standard of fairness *or* justice” (p. 7, italics added). Thus he introduces a comprehensive inclusive disjunction of moral considerations (consequentialist, deontic) into evaluating practical policy arguments, such as ZT arguments. Unsurprisingly, this is a much-debated problem especially for philosophers who combine issues of argumentative rationality with moral concerns. Following Gauthier (1963), Gutmann and Thompson (2004) discuss two varieties of “good” practical arguments: *moral* and *prudential*. According to them, public policies should be based on moral, rather than purely prudential, arguments:

[D]ecision-makers should justify policies by offering moral reasons. [...] The basic criterion of a moral reason [is] generality [...]. Moral arguments apply to everyone who is similarly situated in morally relevant respects. (*op. cit.*, p. 147)

Prudential decision-makers give reasons that are intended to show that a policy is the best that all parties to the decision, given their relative decision-making power, can expect to achieve. (*op. cit.*, p. 148)

In a similar vein, Walton (2007; see Baumtrog, 2013) distinguishes between a *value-based* and *purely instrumental* argument scheme for practical reasoning. It seems clear from the excerpt quoted above that Wein indeed attempts to capture the broader moral aspect of ZT policies in his discussion. But in different passages, he openly excludes any consideration of the morality of ends stated in the premises: “Our interest is in whether having a zero tolerance policy is an appropriate means to a social end, not whether that end is one the society should seek to attain” (Wein, 2012, p. 10). So, contrary to moral or value-based practical argumentation, we are not talking here about “fallaciousness” of arguments of the following type, as long as the causal premise is justified:

- I. Preventing (Jews/Blacks/Palestinians) from using our roads is desirable.
 - II.4.C Zero tolerance policy towards using our roads is “the most cost-effective” means of preventing (Jews/Blacks/Palestinians) from using our roads.
- Ergo:

- III. We should introduce zero tolerance policy towards using our roads by (Jews/Blacks/Palestinians).

Are we not getting somewhat confused here? Let us assume that the problem Wein is dealing with is solely the status of the causal premise which lacks proper evidence: “one commits the zero tolerance fallacy when one advocates or imposes a zero tolerance policy towards some activity while *lacking evidence* for supposing that having zero tolerance for that activity will best serve to reduce the activity in question” (*Ibidem*, italics added). This account is consistent with my reconstruction of the type of practical reasoning Wein seems to be relying on – the one where the causal premise based on the efficacy principle (II.4.C) is used. One can clearly see a rationale for such an approach: just as much as a good car designed for bad purposes (e.g., Volkswagen Beetle) is still a good car, and a bad car designed for good purposes (many of the electric cars) is still a bad car, a good argument for a bad policy is still a good argument (and vice versa).

However, there are still two problems with this approach. First, can public deliberators argue for policies using arguments that a given community (= all those potentially affected by the decision, incl. schoolchildren, Jews, Blacks, and Palestinians) rejects on moral grounds? Would this not be a fallacy of employing starting points that our co-arguers *qua* opponents did not accept – as, for instance, recognized in pragma-dialectics and rhetorical approaches?

Second, the way Wein puts it, the locus of fallaciousness of a ZT argument sits in the problem of evidential, empirical support for one of its premises, namely, the causal premise stating the efficiency of the policy’s means vis-à-vis the (whichever) social end. A fallacy amounts to advancing an unsubstantiated, stronger: false, claim here – one of the common meanings of the term ‘fallacy’ as defined, e.g., in the *Oxford English Dictionary* (fallacy = ‘mistaken belief’). In an earlier paper, Wein (2012) denounces this sense of ‘fallacy’ when used in a statement of Greenpeace “‘fallacy’ simply seems to mean ‘false claim’. [...] The Greenpeace use is—rightly in my view—just ignored by contemporary critical thinking theorists as a case of overblown rhetoric.” (2012, p. 4). A question arises: can a false factual claim, or at least a claim “lacking evidence”, be the source of fallaciousness or not? As I have tried to show, Wein’s entire account can be resting on just that – an arguer commits a ZT fallacy by virtue of employing ‘fallacious’ (unverified, inaccurate, false) claims regarding the causal relation between the means (ZT policy) and the goals ZT policies aim to achieve.

4. CONCLUSION

To conclude – what are we to make of the ZT fallacy? To make something, we would need to find a fallacy of argumentation here. And that would need to be a different fallacy from the one that seems logically valid but is not, as Wein often claims (he thus supports the ‘standard treatment’ – see Hamblin, 1970). I am even tempted to say that ZT fallacies seem not to be valid but are. That is to say, I recognize something fishy in them, but it is not their logical flaw. In any case, Wein goes precisely against Hamblin’s celebrated treatment of fallacies. Yet, he does something

Hamblin-like by trying to build a legalistic procedure for telling the good ZT policy argument from the bad ones. He thus outlines a system of rules belonging to a well-defined, consistent dimension of policy-making. This is a much commendable direction. Otherwise, we would remain with a suspicious idea that a fallacy is simply an unjustified (unverified, unrepresentative, biased, incomplete) empirical claim that requires more critically tested evidence to stand.

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