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Commentary on Yun Xie's "The Notion of On-Balance Premise Reconsidered"

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1. Introduction

I am pleased to have the opportunity to comment on Yun Xie's very interesting and instructive paper. He reports that "the notion of [an] on-balance premise has been recognized by many scholars as a vital tool in understanding the logical structure of the third-pattern conduction.... The basic idea is that in each third-pattern conductive argument there is always an implicit on-balance premise which states a judgment that the positive reasons adduced for the conclusion have outweighed the counter-considerations mentioned in the argument" (p. 2).

In section 2, I consider Xie's argument for the claim that "the notion of [an] on-balance premise has only a restricted applicability in structuring the third-pattern conductive arguments" (p. 7). In section 3, I comment on a criticism Xie makes of Hansen's view that the argument schema 'k even though q; because p' implies that p is a stronger consideration than q; having done so, I make other comments related to the schema. In section 4, I consider two examples of on-balance legal reasoning.

2. Outweighing and undercutting

Xie says that "the notion of defeater as defined by Pollock is very close to the understanding of counter-consideration in the discussions on conduction" (p. 5). He notes that Pollock distinguishes between "rebutting defeaters [which] attack the conclusion of a defeasible inference" and "undercutting defeaters [which] attack the defeasible inference itself" (p. 5). Xie goes on to say that "the distinction between rebutting and undercutting defeaters can also be drawn for counter-considerations ... in conductive arguments" (p. 6). He gives two examples in which "by mentioning the counter-considerations the arguer is acknowledging some concern that would lead directly to the falsity (or the opposite) of the conclusion," and two examples in which "the arguer is ... conceding some concern that ... would ... attack the inference from the supportive reason to the conclusion" (p. 6, omissions his).

Xie believes that "in light of this parallel between defeaters and counter-considerations, we could find that an outweighing relation based merely on collective strength now becomes inadequate in characterizing the ways of arguing in the third-pattern conductions" (p. 6). The "collective strength" Xie is referring to here is that of the "positive reasons" for the conclusion of a third-pattern conduction as compared to the collective strength of the counter-considerations – the reasons against the conclusion.

He adds that "an outweighing relation makes sense only when we are considering two (sets of) reasons that support respectively conflicting conclusions (A and not-A), because it is only in this situation that we are going to take into account their own weight (or degree of support) and to determine which one is stronger" (p. 6). In Xie's view,

an outweighing relation based on collective strength is not appropriate for understanding those conductive arguments that include counter-considerations of a[n] undercutting type [i.e., the type that "attack" the defeasible inference from the positive reasons to the conclusion], because the weight of an undercutting counter-consideration is in support of neither the conclusion nor its opposite[;] thus it cannot be compared with that of the supportive reasons, no matter individually or collectively. Therefore, ... the metaphor of outweighing cannot characterize the process of weighing in conductive arguments in a comprehensive manner, for it overlooks the fact that supportive reasons and counter-consideration[s] can interact in different ways. Accordingly, the notion of on-balance premise has only a restricted applicability in structuring the third-pattern conductive arguments (p. 7).

This is a forceful argument. In response, I will begin by noting a further point Xie makes, namely that if one of two reasons "is in support of *A* while the other [is] in support of *B*, their weights, even though ... both [could] be measured in degree, are not comparable[;] hence to [say] ... one of them outweighs the other would be misleading and inappropriate" (p. 7). By way of illustration, Xie revisits an example he gave earlier in which an inference is made from the premise "the movie is ideal for children" to the conclusion "you ought to take your son to the movie" (p. 5). An undercutting defeater of this argument would be the information that "'your son doesn't like popular children[s] movies'" (p. 5, omissions his). When he returns to this example, Xie says: "given that 'your son doesn't like popular children[s] movies' would be a reason in support of not drawing the conclusion 'you ought to take your son to the movie' from the premise 'the movie is ideal for children', then it will be confusing to say that the reason ... 'your son doesn't like popular children[s] movies' is stronger than the reason ... 'the movie is ideal for children', for they are in support of different claims, thus not comparable in their weights" (p. 7).

The first of the following arguments corresponds to the claim that 'the movie is ideal for children' supports the conclusion 'you ought to take your son to the movie' and the second corresponds to the claim that 'your son doesn't like popular children's movies' (conjoined with the tacit claim that the movie is a popular children's movie) would be a reason in support of not drawing the conclusion 'you ought to take your son to the movie' from the premise 'the movie is ideal for children.'

Argument 1:

The movie is ideal for children.

Therefore,

You ought to take your son to the movie.

Argument 2:

Your son doesn't like popular children's movies.

The movie is a popular children's movie. (tacit premise)

Therefore,

You shouldn't draw the conclusion 'you ought to take your son to the movie' from the premise 'the movie is ideal for children.'

The conjunction of the premises of Argument 2 undercuts the inference in Argument 1 (cf. Xie, p. 5).

These two arguments taken together constitute a case of the type in which one of two (sets of) reasons "is in support of *A* while the other [is] in support of *B*" (p. 7). Thus, Xie would say that it

isn't a case of the type in which an outweighing relation makes sense, because it isn't a case in which two (sets of) reasons support "respectively conflicting conclusions (A and not- A)" (p. 6). At issue in the movie example is whether or not you ought to take your son to the movie. A proponent of Argument 2 could expand the argument as follows:

Argument 2*

Your son doesn't like popular children's movies.

The movie is a popular children's movie. (tacit premise)

Therefore,

You shouldn't draw the conclusion 'you ought to take your son to the movie' from the premise 'the movie is ideal for children.'

Rather, you should draw the opposite conclusion, namely that it isn't the case that you ought to take your son to the movie.

Argument 2* treats the conjunction of its premises as a reason for not drawing the conclusion 'you ought to take your son to the movie' from the premise 'the movie is ideal for children' *and* as a reason for drawing the opposite conclusion. But why draw the opposite conclusion? A plausible explanation, I believe, is that in the opinion of the proponent of Argument 2* the conjunction of the premises of Argument 2* is a stronger reason for the claim that it's *not* the case that you ought to take your son to the movie than is the reason for the claim that it *is* the case that you ought to take your son to the movie, namely that the movie is ideal for children. This judgment could be expressed by saying that the conjunction of the premises of Argument 2* outweighs the premise of Argument 1.

Here then we have a case in which the conjunction of two reasons (the premises of Argument 2*) is deployed both as an undercutting defeater of an argument (Argument 1) and (or so I think plausible) as an outweighing reason - a reason that the proponent of Argument 2* considers to outweigh the reason given in Argument 1 for the conclusion 'you ought to take your son to the movie.' It seems to me that Xie should consider expanding his remarks on "an outweighing relation" so as to allow for the possibility of such a case. I think he could do so consistently with holding that "an outweighing relation makes sense only when we are considering two (sets of) reasons that support respectively conflicting conclusions (A and not- A)" (p. 6).

3. "k even though q; because p"

According to Hansen, "the argument schema ' k even though q ; because p ' implies (i) that k is a conclusion and q is a set of reasons oriented against, or away from[,] k , and (ii) that p is a set of reasons oriented toward k , and (iii) that p is a stronger consideration than q " (2011, p. 45). Xie calls (iii) "the on-balance premise," and says:

Here I think a noteworthy inferential leap is taken from a comparison of strength within the even-though conjunction (i.e., k is stronger than q) to another one that goes beyond the conjunction (i.e., p is stronger than q). It is ... unclear how the former, even if being correctly confirmed, could be used to establish the latter. More specifically, although in such an argument schema it can be said that p and q do have opposite orientations, they do not form an even-though conjunction in any way[;] thus their being of unequal strength remains unknown, or still needs to be uncovered by some other linguistic

clues. Therefore ... I think Hansen's analysis of "even though" based on Ducrot's notion of "orientation" ... fails to provide a linguistic groundwork for validating the presence of [an] on-balance premise in third-pattern conductive arguments. (p. 10, omissions his).

I don't think Hansen makes the inferential leap that Xie thinks he does. For one thing, his argument schema doesn't commit him to the claim that k is stronger than q . For k to be stronger than q , there would need to be some further proposition such that k was a stronger reason for it than q was against it, but Hansen's schema doesn't include any such proposition. Furthermore, in his schema k is simply a conclusion; it isn't a reason (or, and this is to be understood hereafter, a set of reasons) for any proposition, and so, *a fortiori*, it isn't a stronger reason for some further proposition than reason q is against that proposition.

Hansen thinks that in his schema p is presented as being a stronger set of reasons for k than q is against k . If the opposite were true (i.e., if q were presented as being a stronger set of reasons against k than p is for k), the conclusion of the schema would be not- k rather than k . Since the conclusion is k rather than not- k , the schema implies that p (the set of reasons for k) is a stronger consideration than q , which is oriented against k .

Nevertheless, I agree that there is a problem. On Hansen's interpretation of an even-though conjunction, ' k even though q ' implies that k and q have opposite orientations: q is oriented against k , so k must be oriented toward itself since its orientation is the opposite of q 's. But in Hansen's schema, to repeat, k isn't a reason for any proposition, hence it isn't a reason for itself and so it isn't oriented toward itself. Nor is there a further proposition in the schema which k is oriented toward and q is oriented against. However, consider the following example:

r Amy will win her college's physics prize because k she will do very well on her physics exam even though q she hasn't studied for it, since p she has a remarkable aptitude for the subject.

In this example, k and q have opposite orientations: k is directly oriented toward r , and q is indirectly oriented against r by virtue of being directly oriented against k .

To generalize. The propositions k and q in the conjunction ' k even though q ' have opposite orientations just in case there is some further proposition which k is directly oriented toward and q is indirectly oriented against by virtue of being directly oriented against k . If there is no such further proposition in the argument concerned, then k doesn't have an orientation opposite to that of q since it isn't presented as a reason for itself, nor *is* it a reason for itself.

In a case in which there is no proposition with respect to which k and q have opposite orientations, the opposite-orientation analysis of third-pattern conductions will not apply to k and q in Hansen's schema but it will apply to p and q in his schema because p is oriented toward k and q is oriented against k . Furthermore, an instantiation of the schema will imply that in the arguer's judgment p is a stronger set of reasons for k than q is against k , hence that p outweighs q .

4. Two examples of on-balance legal reasoning

Background information. In *R. v. Keegstra* (1990), the Supreme Court of Canada had to decide whether s. 319(2) of the Criminal Code of Canada was constitutionally valid. This provision of the Code prohibited the wilful promotion of hatred against an identifiable group, other than in private conversation. The Court agreed that s. 319(2) infringed the freedom of expression guarantee of the *Canadian Charter of Rights and Freedoms* (s. 2(b)). The question which then arose was whether it could nevertheless be saved under s. 1 of the *Charter* as "a reasonable limit" on that freedom "prescribed by law and demonstrably justified in a free and democratic society." Answering this question required the application of a three-part proportionality test. The third part entails "a weighing of the importance of the state objective [in enacting the legislation concerned] against the effects of limits imposed upon a *Charter* right or guarantee."

The Court upheld the constitutional validity of s. 319(2) by a margin of 4-3.

Example (1). One of the dissenting judges argued that the infringement by s. 319(2) of the *Charter* guarantee of freedom of expression was of "the most serious nature," whereas on "the other side of the scale ... the claims of gains to be achieved at the cost of the infringement of free speech represented by s. 319(2) [were] tenuous." She added: "In my opinion, the result is clear. Any questionable benefit of the legislation is outweighed by the significant infringement on the constitutional guarantee of free expression effected by s. 319(2) of the *Criminal Code*" (*R. v. Keegstra* (1990), n.p.; McLachlin J. (dissenting), Analysis, IV, A(d)). This assessment was a premise in the judge's argument for the conclusion that s. 319(2) could not be upheld under s. 1 of the *Charter* as a reasonable limit prescribed by law and demonstrably justified in a free and democratic society. Here, then, we have an example of an explicit on-balance premise in third-pattern conductive reasoning. Thus, an on-balance premise in such reasoning isn't always an implicit premise.

A transitional matter. A figurative weighing of reasons for and against some claim can result in the negative judgment that, for example, the reasons against the claim do not outweigh the reasons for it. In this event, there are two possibilities: the reasons for and against the claim may be judged to be of equal weight, or the reasons for the claim may be judged to outweigh those against it.

Example (2). One of the majority judges in *Keegstra* wrote that "[t]he effects of s. 319(2), involving as they do the restriction of expression largely removed from the heart of free expression values, are not of such a deleterious nature as to outweigh any advantage gleaned from the limitation of s. 2(b)" – the freedom of expression guarantee (*R. v. Keegstra* (1990), n.p.; Dickson C.J., VII, D (iv)). This do-not-outweigh judgment was an explicit on-balance premise in the judge's overall argument that s. 319(2) was constitutionally valid. He clearly did not intend it to be understood as implying that the impairment-of-expression effects of s. 319(2) were equal in weight to any advantage gleaned from the provision's limitation of freedom of expression, but as implying that any advantage so gleaned outweighed the provision's impairment-of-expression effects, for he said that those effects were not of "a most serious nature," whereas the objective of s. 319(2), namely, the "dissipation of racism," was of "enormous importance."

5. Conclusion

I believe that Xie has raised important issues with respect to the on-balance premise in a third-pattern conductive argument and has made a valuable contribution to their discussion. I have suggested that he consider expanding his remarks on "an outweighing relation" so as to allow for the possibility of a case of the sort I described in section 2. As I indicated in section 3, I am not persuaded by his "inferential leap" criticism of Hansen. Nor am I persuaded that in a third-pattern conduction there is always an *implicit* on-balance premise; the counter-examples given in section 4 show that an on-balance premise in such an argument isn't always implicit.

References

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- R. v. Keegstra*. 1990. <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/695/index.do>