

## **Truth and the Law and the Boxing Ring**

This talk was originally offered as a back up in case a proper speaker couldn't make it. So please make allowances. Better still, imagine that the advertised speaker couldn't make it, and I have stepped in to fill the gap. Accordingly this is not quite the talk as advertised.

My starting point is that a philosophical question about truth is in many respects essentially adversarial. We have or generate competing views. So my question is whether a philosophical dispute is better thought of as analogous to legal process, or to a boxing match.

The legal analogy seems to propose itself. Legal systems and procedures are set up to enquire into the truth of what has happened. And this is not merely a matter of attaching blame and assigning damages and penalties. People want to know what has happened. They feel frustrated when the facts are hidden and liberated when they become known. The success of the South African Truth & Reconciliation Commission, which did not award damages or penalties, attests to this. As Fauziah said, the Truth about who has done what has a social value\* and legal systems are the principal institutions we have for establishing that truth.

A boxing match on the other hand takes place merely to establish who is the better fighter and to entertain punters. Points are scored or knock-outs achieved. We all know that on another day, the fight might go the other way.

so a way of putting my question is: Is philosophical Truth a Finding or a Trophy? Is it about the better philosophy or the better philosopher?

Either way, one common point is that we, or rather I, or you singular, determine the outcome. If it's law, you are Judge and Jury, just like Old Fury. If it's a fight, you're the ref and the judges.

However there is one great drawback to either analogy. legal process and boxing matches are ineluctably particular, whereas philosophical discussions are general. Particularities, if mentioned at all, are subsidiary. Hume, in discussing, and indeed dissing, miracles does not feel obliged to cite a single instance. Whereas even a wide-ranging judicial enquiry like the Leveson inquiry into the press is concerned primarily with the actual practice here and now. General principles like Freedom of Speech and Privacy are subsidiary. Boxing matches are not about the principles of the Noble Art or of Fair Play.

I fully acknowledge this difference, but I shall ignore it. I believe that for many purposes, we may compare the processes of dispute in these different contexts, focussing on the aspects in which they are all contests with contestants.

I'll divide the comparison into three aspects. First how is a contest initiated? Second, how is it to be conducted? And thirdly, what determines success?

### ***1 set up***

In law, there is a case for the courts if one party accuses another of doing it wrong - a civil case; or if one party is accused of a criminal offence. Does this distinction have any

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\* Fauzia took exception to this, but by social value I meant our mutual moral responsibility, not expediency.

analogy in philosophical argument? The civil suit is rather like what happens when one philosopher propounds a thesis which is to displace alternative theses. If more than one alternative thesis is to be defeated then in effect there are so many separate suits: the claim must be made good separately against each one. And, while the adverse thesis in each case is in principle a general one, the philosophical claimant will usually present it in terms of the work of one or two named exponents. Simon started with two but I counted another dozen named exponents in his talk. Failure to name names will have you, the court that is, thinking of straw men and less inclined to expend the court's time on an extended hearing.

Ignoring private prosecutions, a criminal case arises rather differently. An initial survey shows that an offence has apparently been committed. Enquiries are then made to see who can be charged with it. In France, this preliminary investigation is itself part of the judicial process conducted by a judge, while in England it is police work embodied in a report to the Public Prosecutor. Either way, it is not unlike a philosophical survey of a whole topic, such as Aristotle typically began with. He would bring together all opinions and views, whether from popular sentiment or individual thinkers or his own reasoning. He looked for differences, but he tried as far as he could to reconcile those which seem to be merely semantic. Then he could focus on those differences which were substantial. For if two arguments disagree substantially then, at least one is false. As far as the thought police are concerned, we have an offence. And as with the civil suit analogy, while each philosophic view is stateable in general terms, it will usually be associated with the thesis as developed by named philosophers. We have a contest

But there is another form of legal hearing - the judicial enquiry. This differs from the specific cases heard in the courts in that it is not necessarily concerned with offences as such. In effect there are two criteria: that some event has had a very undesirable outcome such that at least some people may have behaved badly; and that there is doubt about what exactly happened and who if anyone is to blame. There seems no reason to doubt that such enquiries can be of great public benefit, not only in identifying wrongdoing and bad practice but in clearing the air of suspicion and rumour.

In a way judicial enquiries combine all the features of the initial enquiry into a crime with some of those of an inquest. But although a judicial enquiry has no powers to convict or to award penalties, nevertheless there are often interested parties concerned to throw the blame on each other, and well equipped with legal counsel to make their case. Classic cases have been the shootings on Black Sunday: IRA versus military version; and the Hillsborough Stadium disaster: police v public. So, with only a little elision, I propose to see legal process as adjudicating between contesting advocates of conflicting views.

A boxing match comes into being rather differently. For professionals, a match is arranged which the respective managers hope will advance the reputation and earnings of their fighter and the promoter hopes will be commercially profitable. For amateurs, competitions will be organised between fighters who are reckoned to have a fair chance against each other. The parties must be reasonably well-matched - the ring is no more available for easy butchery than the philosophical journals are for the destruction of straw men. If one boxer has a title as this or that champion, the other will be nominally the challenger, though this does not necessarily imply that the initiative was on that side.

Likewise the philosopher who argues against a generally accepted view - Ryle says in the *Concept of Mind* - issues a challenge.

Now let's turn to the principles and rules which govern the contest.

## ***2 The Process***

In philosophy as in law - the court is not supposed to arrive at any decision without a full hearing of each side. This is very much an application of the principle of Fair Play as found in boxing as in other sports.

A notable feature of the preliminary or judicial enquiry in law is that any one is free to offer evidence; and in this respect these legal processes resemble Aristotle's preliminary survey in which common opinion was also canvassed. This is something usually omitted from a philosophic survey today, such as one might find in the *Stanford Encyclopaedia*. Perhaps ordinary views could be more often considered, eg as in *Good Old Folk Psychology*. These can be particularly useful in assessing whether there really is a philosophical problem at all, or are the philosophers just stirring things up? Hume and Reid made good use of this resource in dismissing the claims of Reason to discredit the possibility of learning about the world from Experience.

One obvious difference between my three processes is interaction. In philosophy, X makes his case uninterrupted and then Y weighs in with hers. In the ring, the contestants do indeed mix it. The law runs somewhere between, with each side being able to cross-examine the witnesses for the other. Such a procedure may be adopted for the informal philosophical discussion, but this does tend to lead the debate off the main lines and into the small hours.

In law there is the very useful concept of the burden of proof. In general, this means that a criminal charge must be proved beyond reasonable doubt, while a civil suit is decided on the balance of probabilities. But the course of evidence as led may create a burden which it is for the other party to discharge. For example, once a defendant has been shown to have done something, he will have the burden of demonstrating that he did not intend the reasonably predictable consequences of that act.

For general presumptions in philosophy, the principle of charity may be invoked, that is, a presumption that a philosopher did not intend a plainly silly or illogical view unless that is really the only reasonable interpretation to put on her words. On the other hand, a claim that X has made false allegations or deliberately misrepresented Y eg by misleadingly selective quotes amounts to a criminal charge against X who likewise is entitled to the benefit of charity.

Otherwise it may seem that in Philosophy the balance of probabilities is the appropriate initial predisposition, equivalent perhaps to the search not for an ideal but for the best account. However, you as court are entitled to set your own burden of proof. Indeed I recommend this exercise before getting involved in the detail. For example, if X wants to argue that a particular sort of behaviour or activity of an organism is not a naturally evolved bio-chemical process, then when I'm judge I require X to show both why it isn't and what else it is. Otherwise, case dismissed

In some sports, a handicap may be set as a rather literal burden to be discharged by a contestant; but this does not apply to boxing. The contestants start square.

In law we have evidence and the evidence must be admissible. What evidence is inadmissible in the philosophic debate? For most of us, the argument *ad hominem* is not admissible. And we may also reject claims relying on skyhooks such as Churchland's "completed neuroscience" which go beyond any neurological findings yet established. Also ruled out of court, my court anyhow, are arguments based on what X claims to be able or unable to conceive - possibly of psychological interest but devoid of philosophical value.

In boxing, there are fouls, which if intentional can lead to disqualification. There is no real equivalent in philosophy. X will not be disqualified even for wilful misrepresentation as long as X has other, legitimate, points for consideration.

But the legal reliance on evidence may seem to have a drawback. Would we want to consider only philosophical disputes with substantial empirical content? No metaphysics? Well, no loss for some people but perhaps too restrictive. The boxer's point scoring would apply equally to logical as well as to empirical argument.

The legal process has another drawback: the court is supposed to consider only the evidence presented. In this of course it is like the ring - only what the boxers actually do determines the points. Whereas in our own philosophic court, the judge may throw aside impartiality and argue a point on his own account. Perhaps judges get away with a bit of this in their summing up (the notorious "elegance, fragrance and radiance" of a witness in the Archer libel case comes to mind) but they're not meant to.

Enough of the rules of engagement. Let battle commence!

### ***3. The Contest***

In law and in the ring, there may be an outright winner. The knockout has no legal equivalent as far as I know, but in the ring, seconds may throw in the sponge. Likewise in court the prosecution may withdraw a charge without reservation or the defendant may switch to a plea of guilty. And of course in philosophy too, one party may simply concede defeat. Perhaps they would do so more often if propositions hurt as much as punches.

A boxer gets no points for mere footwork, however fancy, that does not achieve anything nor for weightless punches. This is surely the equivalent of 'handwaving' in philosophy. Nul Points!

Law has one big advantage over the ring. However many points are scored by either side, they must amount to a coherent case. Defendant may claim that she wasn't there OR that she saw who really did it, - but hardly both. But a boxer may accumulate points in any way. Strategy and stance may alter from round to round. Each point is scored on its own merits and no consistency is required. I hope that we should all prefer the legal requirement of consistency in philosophy -and as Peter said for truthful fiction.

We may also note that in all these contests, skill does make a difference. In the boxing ring - well Gene Tunney beat Dempsey and Mohammed Ali beat Foreman. And let other

things be equal, the Chaffanbrasses\* will triumph over lesser counsel. Plato's Socrates will knock spots off Thrasymachus, who is left muttering that his opponent can twist the worse into better case.

The law has some further advantages. Scottish law allows the formal verdict of Not Proven, which may well be the appropriate verdict in a philosophical dispute - neither side has fully made its case. In a civil case however an unsuccessful claimant will probably have to pay costs. In boxing however, every expedient is used to find a winner even where the points are tied.

And the law does not purport to deal in finality. "Beyond reasonable doubt" does not mean Certainty. And law has the right of appeal. Few philosophical disputes are confined to one showing. Many go through all the processes of replication, rejoinder, surrejoinder, rebuttal, and surrebuttal; and then some.

There is no appeal in boxing. But there is always the rematch!

### ***Conclusion***

Before I sum up, what about crossover? I know of no instance where the courts have been asked to determine a philosophical dispute. But there are two at least where philosophy stood up against fisticuffs. There was the occasion when Popper warned Wittgenstein not to threaten him with a poker. He was joking but Wittgenstein didn't see the joke. Since they were both Austrian I shall refrain from ethnic stereotyping about sense of humour. Then there was the stand off between Tiger Tyson, world heavyweight champion, and Freddy Ayer, former Waynefleete Professor of Logic. The ended, not in a punchup but in rational discussion, to the credit surely of both parties

So in sum. Overall, legal process seems to offer the better analogy. Particularly useful are the notions of the *prima facie* case, the burden of proof, and the coherence of points made. Also philosophic surveys might be readier to admit common opinion, non-expert witnesses, as Aristotle used to.

But it also has to be said that philosophers as much as boxers need the fights. Few philosophers make a reputation or get published on the basis of agreeing with what others have said. They are not aggrieved parties nor barristers demonstrating forensic skills, but contenders vying for supremacy and spoiling for a fight.

Of course you may well disagree with my findings. You may think this is a load of rubbish. If so, come outside and say that!

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\* Chaffanbrass was a very able barrister in Trollope's *Orley Farm* and *Phineas Redux*.