Freedom to box

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Abstract

The British Medical Association wants to criminalise all boxing. This article examines the logic of the arguments it uses and finds them wanting. The move from medical evidence about the risk of brain damage to the conclusion that boxing should be banned is not warranted. The BMA's arguments are a combination of inconsistent paternalism and legal moralism. Consistent application of the principles implicit in the BMA's arguments would lead to absurd consequences and to severe limitations being put on individual freedom.

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Introduction

The British Medical Association (BMA) has, in recent years, been a driving force in the campaign to outlaw all boxing, amateur and professional alike. Here I shall examine its arguments, as laid out in its most recent statement, *The Boxing Debate*, 1993,¹ and bring out their philosophical assumptions and implications. This will involve critical thinking about the structure of the arguments and a discussion of the wider issues of the limits of individual freedom in a civilised society.

The BMA's case

There are two sorts of brain damage that result from boxing: acute and chronic. Acute damage is severe and usually immediate: it may result in anything from concussion to debilitating brain dysfunction or even death. Chronic damage is more subtle and only becomes apparent over a number of years, often some time after a boxer has given up fighting. It is the long term cumulative effect of repeated blows to the head, and usually takes the form of *dementia pugilistica* also known as "punch drunk syndrome". Symptoms may range from mild loss of co-ordination to complete cog-

nitive decline and parkinsonism. There have been suggestions too that a career in boxing can trigger Alzheimer's disease in later life.

Acute brain damage, particularly where it has resulted in death, paralysis or severe loss of cognitive faculties has been the focus of media attention, and the BMA has exploited a crop of recent boxing deaths to draw attention to its campaign. However, in *The Boxing Debate*, the authors declare that chronic damage is the issue of most concern to the BMA.² The empirical evidence about the risks of chronic and acute damage is controversial, not least because the structure of a career in professional boxing has changed significantly in recent years, and most of the longitudinal studies were based on a situation in which a boxer might fight many hundreds of competitive bouts with short recovery periods in between. Today's professionals may only fight two or three times a year. Nevertheless, unsurprisingly, there is a weight of medical evidence suggesting that a career in boxing, whether amateur or professional (but especially professional) carries with it *some* risk of brain damage.

Let us then accept, for the purposes of this analysis, that boxing is a dangerous sport in this respect. What, then, is the structure of the BMA's argument which leads from this relatively uncontroversial fact to the conclusion that boxing of all kinds should be criminalised? So far we have this:

Premise one: boxing is a very risky activity for participants.

Conclusion: therefore boxing should be banned.

As it stands, the conclusion is an obvious non sequitur. What we need is a further premise. The BMA has presented us with an enthymeme, an argument with a missing premise. The missing premise is implicit rather than explicitly stated. This is unfortunate as it leaves a certain latitude of interpretation about which general principle is being instantiated in this case. One plausible candidate is as follows:

Implicit premise: all very risky activities should be banned.

This implicit premise turns the above into a valid argument, though its premises need be shown to be true. One obvious area which needs clarification is that of the threshold of riskiness which justifies banning any activity. How dangerous does an activity have to be before we are justified in using the cudgel of the criminal law to suppress it? Again, unfortunately, the BMA's report is unforthcoming on this matter.

However, let us assume that the yardstick such cases is the riskiness of boxing. This surely must be an acceptable assumption as far as the BMA is concerned. Yet if we make this move, the BMA is faced with the unattractive situation of having to condemn a number of other obvious "companions in guilt". Take the straightforward case of acute injuries which result in death. According to coroners' reports to the Office of Population Censuses and Surveys for the years 1986–1992, there were only three deaths in England and Wales attributed to boxing. In the same period there were 77 deaths in motor sports; 69 in air sports; 54 in mountaineering; 40 in ball games; and 28 in horse riding.³ The Isle of Man's TT motorcycle race has a death toll of 167 since its inception in 1907; the total number of deaths from motorcycle racing in Britain in that period must be considerably higher. Clearly, then consistency demands that the BMA take a similarly hard line on all these other sports, perhaps with a rigour proportional to the death rate in each one. If it isn't prepared to do this, then we certainly need an explanation as to why boxing deserves to be singled out for this treatment.

Chronic damage

As far as chronic damage is concerned, the paucity of reliable statistical information even for a single sport makes comparisons between sports extremely difficult. However, if we move away from sport to other health-affecting activities, then it is clear that from a social point of view heavy drinking and heavy smoking pose a far greater risk to long term wellbeing than does a career in boxing. Yet, whilst the BMA is concerned about the effects of heavy drinking and smoking, there is no indication that it is prepared to bite the bullet and call for the *criminalisation* of these practices. In that realm education seems to be its prime goal. Yet the BMA doesn't consider itself inconsistent in this area. It has addressed the issue of the companions-in-guilt move. It holds to the line that boxing stands apart from other activities as being *particularly* dangerous, and as having as an intrinsic element of the sport the aim of injuring your opponent. The three main responses the BMA

gives to the companions-in-guilt move are as follows.

1. *The move is usually made in terms of acute injuries or deaths rather than chronic injuries.* The BMA apparently concedes that as far as risk of acute injuries is concerned boxing may not be the most dangerous sport; however, it is the high risk of chronic brain damage that most worries the BMA.

This response is not adequate to rebuff the companions-in-guilt move. The move can just as easily be made in terms of chronic injuries by pointing to the dangers of heavy drinking and heavy smoking and the extremely high risks of chronic damage to users' health that is associated with them. Yet, as we have seen, there is no question of the BMA biting the bullet and calling for a legal ban on these activities. The BMA could, perhaps, strengthen its case by focussing on the fact that the sort of chronic damage which boxers risk is brain damage, which puts an individual's whole personality at risk. However, precisely the same point could be made about the chronic damage caused by heavy drinking.

2. *Relatively few people participate in boxing.* This supposedly skews the statistics, making boxing seem safer than it really is.

An obvious response to this point is that if relatively few people are injured or killed as a result of boxing then from a pragmatic angle the BMA would do well to focus its energies elsewhere, in areas where there is an opportunity to save many lives rather than just a few.

3. *The level of exposure to risk per second is high in boxing.* On this point the BMA's argument is worth quoting in full:

"A professional boxer may only compete in a few fights a year with each fight lasting on average less than half an hour. Compare this to the exposure of rugby players to injury, with each player taking part in a far greater number of matches, each lasting for an hour and twenty minutes. If the number of deaths and injuries are viewed in relation to the numbers taking part and to the level of exposure it can be seen that the boxer faces a far greater chance of death or debilitating injury each time they enter the ring than does the rugby player (or any other sports person for that matter) when they step onto the pitch".⁴

This smacks of sophistry. The BMA seems here to have retreated to the position that because boxing is more dangerous per second than other sports then it must be classified as the most dangerous sport. But this is not comparing like with like: we need to look at the relative dangers for a typical participant rather than the absolute risk per

second. We should consider such clings as the level of exposure within a calendar year for a typical boxer (which is quite different from considering the risk level per second of competitive activity).

None of the BMA's three responses to the companions-in-guilt move is, then, adequate. The charge of inconsistency still holds. However, it has one further argument, the intent argument.

The intent argument

Conceding that the rate of acute injuries incurred in boxing is relatively low, the authors of *The Boxing Debate* comment:

"It should be noted that all the injuries sustained were intentional a legitimate part of boxing, unlike similar injuries occurring in sporting activities which are primarily accidental".⁵

In other words, there is something special about the way in which the injuries were brought about in boxing, something which supposedly singles out boxing from all other sports. Boxers intend to injure their opponents because they know that that is the best way of being sure of winning a fight. The possibility of a win by knockout implies, according to the BMA, that "extra points are given for brain damage".⁶ However, even if we accept this description of boxing and the intentions of participants, this does not explain why it should matter that the damage was caused intentionally. If a rugby player tackles another to stop him or her scoring a try, knowing that there is a significant risk of injuring his or her opponent, it is not instantly clear how this is different from a boxer deliberately punching an opponent hard because this is the best way of winning a fight. In the first the risk of injury is foreseeable, but not the point of the sport; in the second, the risk of injury is foreseeable, and causing injury is one way of winning a bout. However, if a typical career in rugby tends to put you at greater risk of serious injury than a typical career in boxing, then that is, from a medical point of view, the most important factor. It is, surely, the consequences of the sport which matter, not how the injuries happen to have been caused. Besides, although the rules of rugby don't force you to hurt your opponent any more than do the rules of boxing, it is clear that it is possible to injure your opponent in rugby by acting within the rules and this can certainly be to your team's advantage. The England Rugby Union winger Jon Sleightholme interviewed before a recent match against the New Zealand Barbarians made the following comments about what it would take to beat their opponents:

"It's all about tackling. To beat any New Zealand team, you have to put them down from first minute to last. And I'm not talking about any old tackle, either; it has to be aggressive, offensive tackling, the sort that hurts people".⁷

There is one possible interpretation of the intent argument that would make sense from a view which concentrates on the consequences of actions rather than just their motivation. This is the suggestion that because boxers intend to injure each other they are more likely to succeed in doing so. Mike Tyson, for example, has commented:

"I try to catch my opponent on the tip of the nose because I try to punch the bone into his brain".⁸

Yet the fact remains that, despite these terrifyingly violent intentions, boxing does not put its participants at greater risk than many other socially acceptable activities. This version of the intent argument, then, does nothing to explain why boxing should be given such singular treatment. However, the BMA doesn't appear to be suggesting that violent intent makes boxing more dangerous than it would otherwise be; rather it is the existence of the violent intent itself which damns the sport. This is straightforwardly a moral argument, one that stands or falls independently of medical evidence. The sentiment implicit in the comments in the BMA report quoted above is brought out more explicitly in an editorial in the *Journal of the American Medical Association*:

"It is morally wrong for one human being to attempt intentionally to harm the brain of another. The major purpose of a sport event is to win. When the surest way to win is by damaging the opponent's brain, and this becomes standard procedure, the sport is morally wrong. Many say that it is often the intent of American football players to harm their opponents, thereby removing them from the game, especially defensive linemen and linebackers going after the quarterback. This may be true, but such harm is not the intent of the game".⁹

Most boxers would dispute the claim that they intentionally harm the brains of their opponents: what they intend to do is win, not cause brain damage. And often they intend to win on points. But even if we concede that caving brain damage is the surest way to win, and that this is immoral, it does not follow logically that the sport should be made illegal. There are numerous activities which are on the whole considered immoral which are not the appropriate concern of the law. Further argument is still needed to make the move from

establishing that a practice is immoral to concluding that therefore it should be criminalised.

Before following up this last point, I want to review my conclusions so far. First, the BMA's medical arguments seem vulnerable to various forms of the companions-in-guilt move. Secondly, the intent argument is an argument about the moral status of boxing, and even if it is established that boxing is intrinsically immoral, it doesn't follow that it should necessarily be banned. Further justification is needed.

Changing the criminal Law

Three basic approaches to the justification of criminalisation stand out: liberalism, paternalism and legal moralism.¹⁰

1. Liberalism

At the heart of liberalism is some version of the Harm Principle. This is the view that changes to criminal law can only be justified in cases in which a significant risk of harm to others occurs. Coercion of adults is never acceptable when it is done purely for the good of the individuals concerned rather than to avert the risk of harm to others. The law should not be used to force people to become good or happy or healthy. If we think people are harming themselves we can remonstrate with them, attempt to educate them, entreat them or persuade them; but we shouldn't use the law against them. This sort of principle was famously endorsed by John Stuart Mill in *On Liberty*, and is the mainstay of liberal arguments about changes to the criminal law.

Roman law

Some university teachers explain the Harm Principle by standing in front of the class swinging their fists and saying "My freedom to swing my fist ends where your nose begins". Yet this is slightly misleading for the present case, since there is a further aspect of the Harm Principle which this neglects, namely that if someone consents to be hit, then, provided that the consent is informed consent and freely given, that person is not considered to have been harmed in the appropriate sense when the fist connects. This notion was instantiated in Roman law in the principle known as *volenti non fit injuria* (to one who has consented no harm is done). It is not instantiated in British law, as was made apparent in the 1991 "Spanner" case in which 15 consenting sadomasochists were charged with assault, despite the fact that they had all consented to their injuries, and that the injuries were less serious than many incurred on a rugby field (though incurred on different parts of their

anatomy).¹¹ Boxers consent to be hit hard within the rules of the sport, and with the safeguard of a referee instructed to intervene to prevent, wherever possible, serious injury to either participant. So boxers should be free from legal interference with their activities.

It is important that consent is both freely given and informed. It could plausibly be argued that some boxers are more or less forced into the sport by family or peer group pressure, or perhaps through poverty. In some cases the pressure to become a professional boxer may be so intense that it would be fair to say that the individual had not freely chosen to put him- or herself at such risk. Where this is the case, the liberal would argue that a harm had been done to the boxer. In some cases boxers are ignorant of the levels of risk involved in their sport: in such cases consent, no matter how freely given, is not informed. It would be relatively straightforward for the BMA to produce some kind of exam which any would-be boxer had to pass before he or she could be said to have given informed consent to participate in the sport. This exam could test a boxer's knowledge of recent medical research on the effect of repeated blows to the head.

There is one area relating to consent in which the BMA's activities would be supported by liberals, namely with regard to young people boxing. Liberals typically only allow that adequately informed adults can consent to participate in extremely harmful activities. Serious brain damage so clearly undermines the possibility of a full and happy life, that young people should not be allowed to consent to any activity that has a high risk of this sort of injury. So paternalism would be justified towards young people, even though we respect adults' autonomy by allowing them to participate in activities which carry great risks. Even if adults choose badly for themselves, this is better than removing choice altogether. With children, though, it is different: we are justified in preventing them voluntarily putting themselves in great danger, since they aren't in a position to give genuine consent to actions with such far-reaching consequences. The only problem with this position is that, if we are to prevent young boxers from hitting each other, consistency seems to demand that we should also prevent them engaging in a variety of other activities which are as dangerous in the long term as boxing. We should, then, prevent them from smoking, from drinking heavily, and from playing rugby, not just by discouraging them, but by force where necessary.¹² Again, if the BMA wants to single out boxing for special treatment, it needs to indicate why: the only argument offered in *The Boxing Debate* which is immune

from the companions-in-guilt move is the intent argument. And, as we have seen, that is a moral argument which needs independent justification and is not the particular province of an association of doctors. Nor does it alone logically entail that the law should be changed.

Paternalism

Paternalists argue that the criminal law should sometimes be used to protect individuals against themselves and from making bad choices for themselves. Coercion is sometimes justified in order to protect an individual from what would otherwise harm him or her. The coercion is for the individual's sake, not because harm will otherwise be done to society or to non-consenting bystanders. It is clear from this that the BMA's arguments are, for the most part, paternalistic. Boxers put themselves at risk of acute brain damage, and, just as worryingly, of *dementia pugilistica*. Both types of brain damage are harmful to the person concerned so the criminal law should be brought in to prevent individuals putting themselves at such levels of risk. Yet, as we have seen, the BMA's paternalism falls foul of the companions-in-guilt move: to be consistent in their paternalism, the BMA would have to admit that smoking, rugby union, most motor sports, mountaineering, heavy drinking, and a whole range of popular activities should also be banned.

Legal moralism

Legal moralism describes the belief that some activities are simply immoral, whether or not they cause harm to anyone, and that the law should sometimes be used to curb such activities. When the BMA resorts to the intent argument, it seems to rely on an implicit appeal to a form of legal moralism. Boxing involves violent intent; having violent intent is immoral; therefore boxing should be banned. That is the most plausible interpretation of the passing comments in *The Boxing Debate* on this topic. As we have seen, however, this is based on a simplistic assessment of boxers' intentions. However, even if the BMA could show that boxing involved an immoral intent of some kind, it would be extremely difficult to move from this to a justification of a legal ban for this reason alone. As it is, the BMA's comments about the intent argument are so sketchy that they certainly could not provide a justification for a ban; nor do they amount to a plausible defence of the claim that boxing is distinctively and importantly different from most other dangerous sports.

Conclusion

The position advocated by the BMA in *The Boxing Debate* is a form of inconsistent paternalism propped up with legal moralism. The arguments are too weak to justify any change to the criminal law covering the activities of consenting adults. At best they might justify a campaign to educate young people about the relative dangers of boxing and the serious consequences of chronic damage to the brain, however it is caused. There is, too, an important consideration which the BMA failed to investigate. Any change in the criminal law should surely produce a state of affairs preferable to the one before the law was changed. Yet most people associated with boxing are convinced that the effect of criminalising boxing would be to force it underground where the medical controls would be negligible or non-existent, and there would be a much higher risk of boxers sustaining debilitating injuries. If the BMA is principally concerned to minimise harmful injuries, then it must at least address the possibility that the proposed ban on the sport, if implemented, could make matters considerably worse than they now are.

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References and notes

- 1 British Medical Association. *The boxing debate*. London: British Medical Association, June 1993.
- 2 See reference 1: 41.
- 3 Cited in House of Lords debate about boxing. See *Hansard* 1995 April 5 563: 308.
- 4 See reference 1: 67.
- 5 See reference 1: 56.
- 6 See reference 1: 10.
- 7 Hewett C. Lomu's absence may not be a blessing. *The Independent* 1996 Nov 30: 28.
- 8 Oates JC. On boxing. Hopewell, New Jersey: The Ecco Press, 1994: 12.
- 9 [Editorial]. Boxing should be banned in civilised countries - round 3. *Journal of the American Medical Association* 1986; 255: 2483-4.
- 10 In using this tripartite distinction I am following the author of Consent and the criminal law: philosophical foundations. Appendix C of *Consent in the criminal law*. Law Commission Consultation Paper 139. London: HMSO Publications, 1995: 245-82.
- 11 For an interesting discussion of this case and the social, legal and moral issues raised by it see Thompson B. *Sadomasochism*. London: Cassell, 1994.
- 12 There are, of course, legal limits on the purchase of tobacco and alcohol by young people, but at present the law permits the consumption of these substances in private.