PUGILISTIC PROSECUTIONS: PRIZE FIGHTING AND THE COURTS IN NINETEENTH CENTURY BRITAIN

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Introduction

By the mid-nineteenth century prize fighting - whose popularity during the Regency period was remarkable - had, for a variety of internal reasons, suffered a sharp decline in support. Prize fighting, which had always had a dubious association with the criminal underworld, had now clearly let itself become a vehicle for gambling interests: matches were fixed, fighters and referees bought off with the ideal of a fair fight giving way to the presumption of corruption. However, this paper argues that certain external developments were also a factor in the sport's troubles and it is suggested that during this period the criminal law contributed to the death of bare fisted prize fighting; leading in its wake to promotion of gloved 'modern' boxing.

The paper aims to demonstrate that the illegality of prize fighting was based initially on charges of unlawful assembly, riot and tumult and not on the question of physical risk. Therein, fundamental and relevant legal issues such as the mutual consent of the parties, assault, manslaughter even murder were not of immediate concern to the common law courts of the nineteenth century. It wasn't until the end of the century that the courts felt the need to elaborate on the reasons why prize fighting should be declared illegal and dangerous, as opposed to an initial desire to simply keep the lower classes, and their disruptive activities, in their place. Finally, it will be demonstrated that in attempting to reconcile prize fighting with basic principles of criminal law, the courts of the nineteenth century may have sown the seeds for the eventual prohibition of the sport of boxing.

Prize fighting and the Presumption of Corruption

Tom Johnson was the bare-knuckle champion of England from 1784 to 1791. Not since the founders of the sport _ Figg and Broughton _ did a

fighter so completely capture the sporting public's imagination; for Johnson was a courageous and skilful fighter and was regarded by his contemporaries as having plenty of 'bottom' i.e., ability to take punishment.1 Crowds flocked to see him fight and amongst these masses were royalty, notably the Prince of Wales, later King George IV, who became a key patron of the sport. A "golden age" of prize fighting began and between the reign of Johnson and the implementation of the London Prize Ring Rules in 1838 some of the most celebrated boxers of the bare fisted era fought for the title of English champion.2

For example, between 1788 and 1790 a trilogy of fights between Richard Humphries and Daniel Mendoza attracted huge publicity for the sport, with the Prince of Wales attending at least one of these fights. The Mendoza mantle was then passed to John Jackson who along with John Gully dominated the ring until the arrival in 1809 of one of the greatest prizefighters of the era, Tom Cribb. In this early part of the nineteenth century the popularity of the bare fisted prizefight reached its zenith with many "Regency bucks", including Lord Byron, seeking tuition in pugilism from ex-fighters such as Jackson.3 Massive crowds continued to attend prizefights and it is estimated that up to 20,000 people attended the second Cribb v Molyneux fight of 1811.4 This fight was of heightened interest in that an African-American was challenging Cribb, the English champion. In the first fight, an overconfident Cribb managed to prevail after availing of a rest while his supporters strategically invaded the ring. In the second fight, held at Thistledown Gap, Leicester, Molyneux was under prepared and was knocked down in less than twenty minutes. Molyneux's breakfast - boiled fowl, apple tart and a tankard of porter - was clearly not of sufficient nutrient value.

A decade later, when the Regency reached its climax with the coronation of George IV, pugilism was remarkably well represented. John Jackson was charged with the task of assembling the most celebrate boxers of the day as pageboys for the ceremony. In practice these pageboys were to keep order during the coronation at Westminster Abbey. Fighters such as Jackson, Cribb, Bill Richmond and Tom Spring, completed their role competently despite some melodramatics from the King's estranged wife, Caroline.

Typical of the populist commentary on bare fisted boxing during this period can be found in William Hazlitt's description of "The Fight".5 The great essayist was much impressed with the colourful atmosphere created by the championship battle between Tom "The Gas Man" Hickman and Bill Neat in 1821 and devoted much of his piece to describing the wealth patrons - the `Fancy' - who attended the bout and the easy relationship they had not only with each other but with the masses. Indeed, prize fighting could even have been said to be a safety valve in the promotion of class harmony as during this period attendance at and sponsorship of prizefights temporarily sustained the authority of the elite among the masses. At these events, the upper classes could mingle with the masses inculcating a sense of camaraderie and loyalty, but simultaneously distancing themselves through displays of wealth and largesse. The middle class mentalities of the Victorian era would destroy this contract.

By the 1820s boxing had become a victim of its own success and gambling related corruption was endemic in the sport: a trend that was epitomised by the championship of Jem Ward.6 Moreover, within the ring the long-standing authority of the Broughton Rules - written in 1748 - was beginning to fade.7 By the 1830s prize fighting was a farce. Disqualification and downright cheating was rife within the sport. A prime example of this was the Bendingo-Caunt fight of 1835. Bendingo conceded five inches in height and more than three stones in weight to his opponent and throughout the fight he dodged, weaved and generally frustrated his opponent. Eventually after twenty-two rounds Caunt lost his temper, ran over to Bendingo's corner during a rest period and struck his opponent. Caunt was disqualified. Bendingo and Caunt later fought two more bouts; one ended in a riot and the other ended in a further disqualification for the impetuous Caunt.8

There was also however a darker side to this type of farrago and the lack of organisation of the sport led to frequent mismatches, which resulted in high profile fatalities. For example in 1830 a fight between Simon Byrne and Sandy McKay, for the right to challenge Jem Ward, ended in the death of McKay; while in 1838 Owen Swift pummelled a fighter called Brighton Bill to death. This fatality overshadowed the introduction in the same year of the London Prize Ring Rules, which were a detailed effort to update the clearly inadequate Broughton Rules of 1743. The twenty-nine London

Prize ring rules, revised in 1853, largely elaborated and clarified the Broughton Rules. In particular, the range of fouls was specified in greater detail with fouls such as butting, gouging, biting, scratching, kicking, the use of stones in the hand, being prohibited. Moreover, some element of safety standards were introduced, notably that after the thirty seconds between rounds had elapsed and the umpire had called 'time', each man had eight seconds to walk to the scratch unaided. Apparently this was to prevent seconds from carrying on boxers to the scratch who were clearly in no fit state to continue.

Nonetheless, the impact of these rules was limited. Public attitudes and values had altered so much towards prize fighting that no amount of tampering with existing rules would bring the sport within the range of 'socially acceptable' Victorian sports. Moreover, despite the best efforts of the Pugilistic Benevolent Society, set up in 1852, the sport itself was rotten to the core with falling attendances, diminishing stakes and poor quality championships. Simply put, the misadministration of the sport, combined with the decline of prize fighting's traditional aristocratic support base and the changing social order hastened the decline of the sport.

In 1860 prize fighting had it last great event with the Sayers v Heenan fight held at Farnborough in Hampshire. There was an international element to the bout as Heenan hailed from New York and Sayers was the undisputed champion of England. It was a bizarre and brutal fight. Heenan appeared to be the superior but the crowd rallied to Sayers assistance i.e., they invaded the ring, and the bout ended in a draw. Heenan was clearly disorientated after the fight while Sayers sustained a broken arm. The fight did capture the imagination of the nation and both fighters were awarded commemorative belts and a public subscription raised over £3,000 for Sayers, awarded on condition that he would never enter the ring again.9 Yet, overall the fight was a temporary boom for the sport and if anything highlighted the paucity of competition that now existed within England.

At this point it is suggested that in parallel to the internal problems besetting the sport, external developments were also contributing to its decline. In short, prize fighting was illegal and the criminal law was slowly harassing the bare fisted fight into oblivion.

The Lucre of Prize Fighting

As early as 1803 the jurist Sir Edward East was of the opinion that apart from distracting the masses from their work, the sport of prize fighting did nothing but promote vice in various forms, notably excess drinking and gambling.10 East's contemporary, Sir Michael Foster, was of a similar attitude.11 Foster acknowledged that rough and undisciplined horseplay of a kind that was capable of causing bodily harm was not unlawful in that it could be equated to manly diversions that intended to give strength, skill and activity and may fit people for defence, public as well as personal, in time of need. Nevertheless, he was equally adamant that his views did not extend to prize fighting and public boxing matches of the kind which were exhibited for lucre and served no valuable purpose but on the contrary encouraged a spirit of idleness and debauchery.

The courts took their lead from the great institutional writers. In 1822, for example, the owner of the 'Tennis Court' in London's Haymarket took an action for libel 'in his vocation as an exhibitor of sparring matches'.12 The case centred on whether the plaintiff's exhibitions were illegal. Mr Justice Burrough, a noted opponent of prize fighting, argued that the sparring matches were illegal as the chief object for which persons attended the exhibitions was to see and judge the comparative strength and skill of the parties, who may be afterwards matched as prizefighters. Burrough J was of no doubt that the skill acquired at these boxing schools enabled the combatants to destroy life, in some instances, by a single blow; and that it was notorious that persons assembled at these exhibitions engaged in illegal betting.13

Though in an overall sense it is clear that by the mid-nineteenth century the courts viewed prize fighting as both a seedy and sinister pursuit, and that prize fighting was illegal; the actual basis and scope of that illegality was vaguely drawn. Reviewing the case law on prize fighting an anonymous contributor to the *Law Times* of 28 April 1860 concluded that there were many difficulties in reconciling the law and prize fighting as the cases involved appear to rest on loose dicta, which when tested, appear to be unsupported by authority or principle; said 'sometimes to be riot and sometimes an assault', and yet lacking the chief element of both; thus, possessing neither certainty or consistency.14

Sometimes to be Riot

Almost one hundred years after the Riot Act of 1715, Russell defined a riot as a tumultuous disturbance of the peace by three or more persons assembling together, of their own authority, with intent mutually to execute a violent enterprise to the terror of the people.15 There under, prizefights were declared illegal. For example, in *R v Billingham, Savage and Skinner (1825)*16 the defendants were indicted for a riot and an assault of a Mr. Daniel Rogers, a magistrate. It appears from the facts that Billingham and Savage had agreed to a prizefight. It was estimated that about a thousand people gathered to witness the bout. Mr Rogers in the execution of his office attempted to stop the fight. Mr. Skinner objected to the magistrate's actions and a scuffle ensued, which, according to the case report, ended in a general tumult and 'the rescue of Skinner.'17

The ubiquitous Mr. Justice Burrough found the prisoners guilty on the ground that such fights were unlawful assemblies and that everyone going to them was guilty of an offence. Burroguh J noted that the inconvenience of these fight in the country was not so great but that nearer London the quantity of crime that these fights led to, was immense.18

Similarly, *R v Perkins and others (1831)*19 is a classic prize fighting indictment for riot and assault. From the facts it appears that a prizefight with fists was fought between Perkins and a Mr. Robert Coates. Another of the defendants, named Weekly, acted as a second for Perkins. Of the two remaining defendants, one had the task of collecting money for the fighters while the other walked around the ring in order to give the fighter room to box; there being almost a thousand spectators present.

Apparently Perkins struck the first blow but Patteson J in summing up for the jury argued that prize fighting was illegal, as it was clearly a breach of the peace, thus, it was irrelevant who struck the first blow as all who were present on such an occasion were equally guilty of riot as the principals. Moreover, Patteson J was of the opinion that all persons who went out to see these men strike each other, and were present when they did so, they are all, in point of law, guilty of an assault. There was to be no distinction between those who concur in the act and those who fight.20 The jury found the defendants guilty of riot but not assault. Later in that same year in *R v*

*Hargrave (1831)*21, Mr. Justice Patteson gave similar directions to the jury. In this case a fighter had died as a result of a prizefight and Hargrave, who was present and assisted in the management of the fight, was convicted of manslaughter and sentenced to fourteen years transportation.

*R v Murphy (1833)*22 centred on a fight between Michael Murphy and Edward Thompson, attended by the defendant, Edward Murphy. Michael Murphy was charged with murder and the defendant, in aiding and abetting the bout, was charged with manslaughter. Several witnesses attested to the fact that Murphy did attend the fight but did not act as a second, did not in any way assist in the management of the fight, in fact, that he did not even say anything. However, in light of precedent mere attendance at the fight sufficed.

In addition, there was evidence that the ring was broken several times by the assembled 'Irish mob', many of whom were armed with sticks which they 'used with great violence'. Accordingly, Littledale J reminded the jury that if the death occurred from violence unconnected with the fight itself i.e., that Murphy's mob had in fact taken the opportunity to deal with their hero's opponent, then the defendant could not be found guilty. A verdict of guilty of manslaughter was returned.

The final case that can be located within this pattern is *R v Brown (1841).*23 In the instant case, Daniel Herbert, a constable in the Bedfordshire rural police, received a tip off about the holding of a prizefight. On 9 February 1841, Herbert duly located the fight; whereabouts four hundred people were assembled around a ring of stake and rope. In the centre the constable saw two men 'in fighting attitudes'. He endeavoured to take the men who were fighting into custody. The crowd prevented him from doing so. Thereupon he charged the defendant 'in the Queen's name to aid and assist in quelling this riot'. The defendant refused on the grounds that he had horses to take care of. It is also suggested that the defendant's reluctance might have been influenced by the fact that the constable had already attempted to take several of the crowd into custody but had failed miserably.

The Crown successfully prosecuted the defendant for refusing to assist the constable in execution of his duty in quelling a riot. In summing up Baron

Alderson reminded the jury that all prizefights were illegal as breaches of the peace and that all persons engaging in them were punishable by law. A verdict of guilty was returned.

Thus far, the law on prize fighting can be said to be clear: they were illegal, primarily on the grounds that they were riotous, unlawful assemblies. Furthermore, in their determination to eradicate prizefights the courts gradually extended liability beyond the combatants; first to the organisers and then to the spectators of the fight. Finally, as the nineteenth century progressed, increased policing (they did not have to rely, per *Brown*, on others), resulted in the emphasis in prize fighting prosecutions switching away from unlawful assembly and riot and towards assault. The very legality of the sport was now beginning to be questioned.

Sometimes an Assault

*R v Hunt, Swanton and Others (1845)*24 neatly encapsulates the aforementioned trend. In this case, the prisoners were indicted in one count for riot, and in another for an affray i.e., then a misdemeanour said to involve the fighting of two or more persons in a public place to the terror of His Majesty's subjects. It seems that Hunt and Swanton had fought each other before a large crowd and that the others were present, aiding and abetting. The fight took place in a secluded spot, which was a considerable distant from any highway. When the officers appeared the fight immediately stopped and the prisoners 'quietly yielded'.

Baron Alderson argued that there was no case against the accused. He was of the opinion that as to affray it must occur in some public place; the fight in question was to all intents and purposes a private one. As to riot, there must be some sort of resistance made to lawful authority to constitute it and some attempt to oppose the constables who are there to preserve the peace. In this case there was no resistance was shown.

And from here on the courts become more concerned with regulating the degree of harm that people could consent to in a fight. In sum, the courts began to hold that bare fisted fighting was indictable not only as an unlawful assembly (and in the case of death, as manslaughter) but as mutual assaults; even though there was neither death nor rioting.

In this, the courts distinguished between the (indoor, regulated, exhibitionist and amateur) sparring match and the (outdoor, unregulated, antagonistic and professional) prizefight, on the grounds that the likelihood of one of the combatants becoming seriously injured was reduced in the former.25 Sparring matches were taken to be regulated by variations of Broughton's Rules (1743), the London Prize Ring Rules (1838) or the Queensberry Rules (1865), hence less dangerous. Upper and middle class supporters of boxing realised that the greater codification of sparring matches would led greater respectability for the sport and ultimately its legitimisation.26 In fact, it could be argued that the Queensberry rules were specifically framed with the object of making boxing a sufficiently safe spectacle to be accounted legal.

Yet, two questions arise from this apparently unstoppable legitimisation of boxing. First, did the rules, and in particular the Queensberry code, actually make the sport safer? And second, how as a matter of fact and law did the courts distinguish between a prizefight and a sparring match?

A Safer Sport?

At first, the Queensberry rules seemed to sanitise the sport of boxing in that they made the sport less dangerous: wrestling and the throwing of an opponent (usually head first) to the floor were prohibited; punching with the fist was the only legal way to attack an opponent; padded gloves were used; three minute rounds with one minute breaks were introduced and later equal weight divisions and standardised referring techniques were encouraged.27 All these developments gave the appearance of a safer sport and the virtues of the Queensberry rules; both from an organisational and safety point of view, were gradually endorsed by the great champions of the day, most notably by John L. Sullivan.28

Yet, it can be argued that the changes introduced by the Queensberry rules were superficial only and may even have intensified the physicality of the sport.29 Under the old rules, if a boxer was tired he could go down on one knee and recover for up to a minute but now the fighter was required by the rules, and the referee, to fight for a full three minutes. Furthermore, the ten-second knock out rule encouraged vicious, intense attacks, usually centred on the opponent's head.

At first instance, it seemed that the wearing of padded gloves negated the increased intensity of the sport; yet, gloves were soon seen to protect the fighter's hands more than his head. In fact gloves, especially when soaked with sweat, in effect became a club and allowed the fighter to hit areas of the opponent's skull, which previously were out of bounds because of the danger of breaking a knuckle or fingers. In short, the skills of boxing were transformed from a defensive system based mainly on upper body strength to an offensive system, which encouraged chopping blows to the head. Recently, one sports medic has noted that removing the gloves would make boxing a sport of jabs and defence and it would de-emphasise the knockout punch thus making the sport safer to the extent that such a rule change would save lives and preserve the sport.30 In sum however, the medical view of boxing is generally hostile and both the British and American Medical Associations are particularly vociferous in the campaign to ban boxing.31

A Different Sport?

The Victorian policy on sport centred mainly on transforming traditional sports into events as regulated and centrally controlled as the factory whistle. These physically beneficial but disciplined pastimes would, at the very least, help to keep the masses occupied or at best, transform them into efficient and muscular Christians.32 Amateur boxing or sparring was seen as an ideal target and, for a number of reasons, this "legitimisation" experiment was an outstanding success.

First, the Queensberry rules, outwardly at least, sanitised the rougher edges of the sport and subjected the sport to greater uniformity hence popularity. Second, the new regulations permitted the ring to be built indoors on a stage or plinth, thus superseding the long held tradition that it be staked on turf only. For the middle classes, this meant that boxing events could now be held in exclusive gentlemen's clubs and for the urbanised working classes it meant that boxing could be easily facilitated in various local halls. Moreover, for the promoters of these events, an indoor arena meant that they could exert greater control and collection over the admission price, though in turn it would be easier for the local constabulary to patrol.33 Third and finally, the marketing of boxing, legitimate or otherwise, was an 'easy sell' among the working class of Britain. In Britain there had always

been a sub-culture of 'the fight' and the working classes needed little encouragement to support the officially sanctioned version of the sport.34 In short, amateur boxing was extremely popular in the second half of the nineteenth century particularly in Britain, as evidenced by the foundation of the Amateur Boxing Association in 1880, which in the following year held its first official amateur championship, from a feeder of local competitions. In fact, the 1890s was a golden period for the sport as a new era of legal clubs flourished in all areas and among all classes of British society.

Not surprisingly, given its history, amateur boxing in Britain was seen as a natural source for a legitimate, professional and commercially viable sport.35 Using this veil of legitimacy, modern professional boxing organisations began in Britain with the Pelican Club (founded 1887), superseded by the National Sporting Club (1891) with the British Boxing Board of Control (1919) effectively replacing the National Sporting Club after 1929. The BBBC, and the technical regulations it administered, laid the institutional foundation of the modern sport. Bare knuckle prize fighting was dead, at least officially.36

When is a fight not a fight?

Symbolically, the old sport of bare fisted fighting died with the John L. Sullivan v Gentleman Jim Corbett fight, held in New Orleans on 7 September 1892; a 'world championship' bout that was governed by the Queensberry rules.37 However, in England the break with the past was not, in legal terms, as clear cut as the Corbett's victory had been in the United States. While the increased self-regulation of the sport assisted in quelling harsher legal pronouncements, it must be noted that there was no immediate or uniform application of these rules and for at least a twenty-year period after the introduction of the Queensberry code, there was no central authority to ensure that the rules were respected. Local police continued to disrupt events to determine whether they were socially and legally acceptable, and in particular whether the establishments that held these events were causing a nuisance by attracting unwanted crowds.38

Moreover, the courts themselves had, in the short term and as the Queensberry code slowly established itself, a difficulty in distinguishing

between the regulated sparring match, which should be promoted, and the potentially riotous prizefight, which should be seen as no more than a street fight.39 In solution, the courts in England clarified the situation somewhat by directing juries that an encounter was lawful if it were a mere exhibition of skill in sparring but if the combatants intended to fight until one gave in from exhaustion it was a criminal offence. It followed that it was left to the jury as a matter of fact to decide whether on the evidence presented the encounter was tolerable sparring match or an illegal prizefight.40

In *R v Orton (1878)*41 the Court for Crown Cases Reserved confirmed that if a fight were a mere exhibition of skill in sparring it was not unlawful; but that if the parties met intending to fight till one gave in from exhaustion or injury received it was a breach of the law and a prizefight, whether the combatants fought in gloves or not. At trial the jury had held, on reviewing the facts, and examining the gloves, that even though the appearance was of an organised boxing match such was the severity and intensity of the punishment inflicted that it clearly went beyond that which would be expected in a gloved boxing match of fixed duration.

Reference was made in *Orton* to *R v Young (1866)*42, wherein a boxer was put on trial for manslaughter when, during an indoor sparring match, his opponent fell against a ring post and died. Baron Bramwell had difficulty in seeing what there was unlawful in the matter, primarily on the grounds that the fight had taken place in private rooms there being no breach of the peace. Bramwell noted that the medical witness had stated that sparring with the gloves was not dangerous, and not a thing likely to kill, however, if the men fought on until they were in such a state of exhaustion that it was probable they would fall, and fall dangerously, and if death ensued from that, it might amount to manslaughter.43 The jury held the accused not guilty.

This matter as a whole was further and in many ways definitively considered by the Court of Crown Cases Reserved in *R v Coney (1882)*.44 Accordingly, *Coney* provides an admirable and provocative summary of the points made so far on the legality and demise of the bare-knuckle fight.45

Coney: The Core Facts and Issues

In essence, the case concerned a charge of aiding and abetting a prize-fight46; yet it is still regarded today as a leading authority on the issue of criminal consent.47 The facts of the case are straightforward. On 16 June 1881, at the close of Ascot races, two men, Mitchell and Burke, were seen fighting each other in a ring, formed by ropes surrounded by posts, in the presence of a large crowd. The combatants were assisted by their 'seconds' Parker and Symonds. In addition, three named prisoners, Coney, Gilliam and Tully and five other persons were seen amongst the crowd. They were also charged in an indictment containing a number of counts for unlawful assaults, riot and rout. At trial, all counts except the seventh and eighth were given up by the prosecution. The seventh count charged all prisoners except Burke with a common assault upon him. The eighth count charged all prisoners except Mitchell with a common assault upon him.

In defence of Coney and the other spectators, two principal arguments were forwarded. First, that it was questionable whether the combatants were guilty of assaults upon each other and second, that it was incorrect to state that the defendants were aiding and abetting the fight given that they took no active part in the fight or its management. The initial argument centred on the proposition that the offence of aiding and abetting could only have been committed where it was a criminal activity that was being encouraged by the party charged. It followed that in order for an assault to have been committed, it was necessary that the act had been executed without the consent of the alleged victim. Thus, counsel for the defendants argued that since Burke and Mitchell consented to their fight, an assault could not have occurred.

As regards the second defence, witnesses supplied evidence that the named prisoners did not participate in any way in the fight, its organisation or in any of the betting activity that surrounded the occasion. In fact, one witness said that the crowd was so tightly packed that it would not have been possible for Coney to push his way out! It was claimed that the prisoners' attendance at the fight was merely passive in nature.

At trial, the chairman directed the jury that prizefights are illegal and all persons who go to such an event to see the combatants strike each other,

and who are present when they do so, are guilty in law of an assault on the grounds of aiding and abetting. The jury found that Burke and Mitchell were clearly guilty of assault on each other as combatants, as were Parker and Symonds who directly aided the management of the fight. All were duly sentenced to six weeks imprisonment with hard labour. The jury also found that Coney, Gilliam and Tully were guilty of assault but only in consequence of the chairman's direction of law. The jury could not hold as a matter of fact that Coney *et al* were aiding and abetting.

The chairman asked the opinion of the Court of Criminal appeal as to whether his direction to the jury on this matter was correct. Eleven judgments were handed down and on a clear eight to three majority the conviction of the spectators was quashed.48 The Court was of the opinion that mere voluntary presence at such an event could not be translated into aiding and abetting a criminal activity.

However, the court did unanimously also take the opportunity to remark that prize fighting was a criminal activity. The judgment of Hawkins was particularly strong in this regard. He referred to *R v Ward (1872)*49 as support for his proposition that every fight containing an element of a violent trade of blows is illegal. In the stated case, the prisoner was tried for the manslaughter of a man whom he had killed in a fight. The deceased had in fact initiated the fight by way of a challenge of honour in a public trial of skill in boxing. No unfairness was suggested, and yet it was held that the prisoner was properly convicted.

Hawkins did admit however that the cases, in which it has been held that persons may lawfully engage in friendly encounters not calculated to produce real injury or to arouse angry passions in either, do not in the least militate against the above view.50 Thus, boxing as practiced under the Queensbury rules was an exception to the general rule on the grounds that it was neither breached the peace nor was it calculated to be productive thereof. In short, sparring could be deemed socially acceptable, as it was not designed to 'produce mischief'.

Hawkins concluded with the reminder that even under the colour of a friendly encounter, where the parties really have as their object the intention to beat each other until one of them is exhausted or subdued by

that force, and so engage in a conflict likely to end in breach of the peace, each is liable to be prosecuted for assault. According to Hawkins, it is a matter of fact for the jury to decide whether the circumstances of the fight are socially acceptable or not.

Conclusion

Less than a decade after the case, an analysis of the dicta in *Coney* led one commentator to suggest that the test of the legality of a boxing match was twofold. First, is it a breach of the peace or does it tend to it, and second, does it endanger life or health? If it does either of these it is unlawful and no consent can make it otherwise.51 In practical terms what this meant was that juries had to decide whether the fight in question was more a sparring contest of regulated limitations, thus tolerable, rather than an unregulated and illegal prizefight. It is submitted that it remains the cases that on this dubious thread of policy and distinction does the legality of boxing hang. It is suggested that it is unsatisfactory that the legality of this sport is defined in entirely negative terms, i.e., it is not prize fighting which is illegal because it disturbs the peace; may incite rioting and public disorder; and, given its unregulated nature, carries a greater risk of serious injury. In addition, it is suggested that it is unsatisfactory that to a large extent the courts themselves abdicated responsibility for the decision by leaving the matter to the jury.52

Furthermore, a fundamental problem of resting the legality of boxing on the distinction between sparring and a prizefight is that the modern professional bout is - the wearing of gloves apart - the direct descendant of the prizefight, wherein the fighters box for money and often do so to the point of near exhaustion. In frustration, commentators such as Parpworth are forced to conclude that the apparent immunity of boxing from the sanction of the law defies rational explanation and that all one can surmise is that boxing remains outside the ordinary law of violence because society chooses to tolerate it.53

In overall conclusion it can be summarised that the sport of boxing had by the 1890s in Britain successfully sanitised itself, thus securing its future. The sport had through stricter regulation, some called it effeminisation, grafted onto its dubious past a modern sheen of respectability. The sport

was now a classic expression of the Victorian policy on sport such as it implicitly existed. This largely amateur sport promoted a healthy lifestyle; could be easily accommodated in an urban environment; was supported by all classes with the added advantage of being particularly popular, thus distracting, for the working classes. Yes, a professional 'spin off' of the sport existed but this was also, in theory, well regulated.

In fact, such was the transformation of the sport in Britain that by the end of the nineteenth century, much of the rawness of the sport had (thankfully) been lost. Certain purists and prizefighters sought another, less paternalistic arena, in which to fight. The United States, for so many reasons, provided the perfect location. It would take a lot more than mere courts and laws to 'sanitise' prizefighters such as John L. Sullivan. And with that the 'heart' of professional boxing moved across the Atlantic, to where it remains.

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Notes

1 Note the importance given to Johnson by Egan, 1812.

2 See generally Brady, 1947; Butler, 1972; Cleveland, 1924; Ford, 1971 and Golding, 1952.

3 Some of the correspondence between Byron and Jackson is reproduced by Heinz and Ward, 1999, p.49-50

4 Egan, 1812, p.243

5 Reproduced by Heinz and Ward, 1999, pp.133-141

6 Brailsford, 1988, p.88

7 Pimlott, 1968, p.51

8 Mullan, 1996, p.12

9 Lloyd, 1977 carries out a tremendous review of this fight and its social context.

10 East, 1803, p.270

11 Foster, 1809, at Discourse 2, Chapter 1, p.260

12 Hunt v Bell, in *English Reports* (Vol. 130, 1822, p.1)

13 Ibid. On the relationship between prize fighting, gambling and the alehouse see Clark, 1983 and Vorspan, 2000

14 *Law Times*, 1860, p.75

15 Russell, 1819, p.266

16 *English Reports* (Vol.172, 1825, p.106)

17 Ibid.

18 Ibid.

19 *English Reports* (Vol. 172, 1831, p.814)

20 Ibid.

21 *English Reports* (Vol. 172, 1831, p.925)

22 *English Reports* (Vol. 172, 1833, p.1164)

23 *English Reports* (Vol. 174, 1841, p.522)

24 *Cox's Criminal Cases* (Vol. 1, 1845, p.177)

25 Parpworth, 1994

26 Gorn, 1989, p.202

27 Golesworthy, 1975, p.194

28 Isenberg, 1994, pp.257-280

29 Gorn, 1989, p.205

30 Ryan, 1983 and Gammon, 2001

31 Gorn, 1989, p.297 and footnote 55; Ryan, 1992; Gunn and Ormerod, 2000, p.34-36 and Gammon, 2001

32 Malcolmson, 1973, p.172

33 Sugden, 1996, p.26

34 Shipley, 1989, pp.78-115

35 Girouard, 1975, p.14 and Walvin, 1978, p.27

36 cf. Hotten, 1998

37 On the historical importance of this fight, see further Adams, 1956 and Sammons, 1990, pp.3-29

38 In 1890 the good citizens of Gerrard Street, Soho in London sought, and were granted, an injunction in nuisance against the nearby Pelican club, see Bellamy v Wells, in *Chancery Division Case Reports,* 1890, p.156

39 Vorspan, 2000, pp.902-904

40 Parpworth, 1994

41 *Cox's Criminal Cases* (Vol. 14, 1878, p.226)

42 *Cox's Criminal Cases* (Vol. 10, 1866, p.371)

43 Ibid, p.373

44 *Queen's Bench Division Case Reports* (Vol. 8, 1882, p.534)

45 Parpworth, 1994

46 R v Clarkson, in *Criminal Appeal Reports* (Vol. 55, 1971, p.455)

47 R v Brown, in *Weekly Law Reports* (Vol. 2, 1993, p.557)

48 Baron Huddleston, Denam, Manisty, Hawkins, Lopes, Stephen, Cave and North, JJ; with Lord Coleridge, Baron Pollock and Matthew J dissenting.

49 *Cox's Criminal Cases* (Vol. 12, 1872, p.123)

50 Coney, 1882, p.553

51 Manson, 1890

52 Parpworth, 1994, p.8

53 Ibid.