

The Gallows

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Abstract

This essay is about a paradox “The Gallows” to be found in Cervantes’ *Don Quixote*, and noted (though not discussed) in Sainsbury’s book *Paradoxes*. I argue that it delivers a bona fide legal dilemma (that is, something of the form $OA \wedge O\neg A$), and with a small and very plausible tweak, a legal dialetheia (that is, something of the form $OA \wedge \neg OA$).

Dedication It gives me great pleasure to dedicate this essay to Mark Sainsbury, an old friend. Though we may not always agree on matters philosophical, discussions with him are always rewarding. One cannot fail to learn from his insights, open mindedness, original ideas, and constructive criticism—even more enjoyable when undertaken in his genial company.

1 Introduction

At the end of his admirable book, *Paradoxes*,¹ Sainsbury gives a miscellaneous list of paradoxes not treated elsewhere in the book. One of these is termed *The Gallows*, which he formulates as follows (p. 160, 3rd edn):

¹Sainsbury (1988). I owe a special debt to Mark concerning this book. The final chapter of the book is a discussion of a dialethic approach to paradoxes. At the time when the book appeared, dialetheism was generally regarded as “off the wall”, and not to be taken seriously. The fact that a philosopher of Mark’s calibre decided to take it seriously was a significant factor in the general recognition that, whether or not dialetheism is true, there are deep and significant issues here. Thank you, Mark.

The law of a certain land is that all who wish to enter the city are asked to state their business there. Those who reply truly are allowed to enter and depart in peace. Those who reply falsely are hanged. What should happen to the traveler who, when asked his business, replies, “I have come to be hanged”?

The source of the paradox is not referenced, but the paradox is to be found in Miguel de Cervantes’ 1605/1615 epic story *Don Quixote de La Mancha*. Don Quixote’s servant, Sancho Panza, a character of simple (and laudable) common sense, is made Governor of Barataria, and is asked to resolve a tricky legal issue, put to him as follows:²

Señor, a large river separated two districts of one and the same lordship³—will your worship please to pay attention, for the case is an important and a rather knotty one? Well then, on this river there was a bridge, and at one end of it a gallows, and a sort of tribunal, where four judges commonly sat to administer the law which the lord of river, bridge and the lordship had enacted, and which was to this effect, ‘If anyone crosses by this bridge from one side to the other he shall declare on oath where he is going to and with what object; and if he swears truly, he shall be allowed to pass, but if falsely, he shall be put to death for it by hanging on the gallows erected there, without any remission.’ Though the law and its severe penalty were known, many persons crossed, but in their declarations it was easy to see at once they were telling the truth, and the judges let them pass free. It happened, however, that one man, when they came to take his declaration, swore and said that by the oath he took he was going to die upon that gallows that stood there, and nothing else. The judges held a consultation over the oath, and they said, ‘If we let this man pass free he has sworn falsely, and by the law he ought to die; but if we hang him, as he swore he was going to die on that gallows, and therefore swore the truth, by the same law he ought to go free.’ It is asked of your worship, señor governor, what are the judges to do with this man? For they are still in doubt and perplexity; and having heard of your worship’s acute and exalted intellect,

²Ormsby (1948), Part 2, ch. 51.

³Archaic english for ‘estate’.

they have sent me to entreat your worship on their behalf to give your opinion on this very intricate and puzzling case.

Sancho summarises the conundrum:

It seems to me I can set the matter right in a moment, and in this way; the man swears that he is going to die upon the gallows; but if he dies upon it, he has sworn the truth, and by the law enacted deserves to go free and pass over the bridge; but if they don't hang him, then he has sworn falsely, and by the same law deserves to be hanged.

And then judges:

Well then I say that of this man they should let pass the part that has sworn truly, and hang the part that has lied; and in this way the conditions of the passage will be fully complied with.

When it is pointed out that splitting the man in twain would cause him to die, so that neither part of the law could be carried out, he changes his mind:

Look here, my good sir, either I'm a numskull or else there is the same reason for this passenger dying as for his living and passing over the bridge; for if the truth saves him the falsehood equally condemns him; and that being the case it is my opinion you should say to the gentlemen who sent you to me that as the arguments for condemning him and for absolving him are exactly balanced, they should let him pass freely, as it is always more praiseworthy to do good than to do evil; this I would give signed with my name if I knew how to sign...

We will come back to Sancho's judgment in due course, but first let us look more closely at the paradox.⁴

⁴Where, exactly, Cervantes got this paradox from is moot, but it is closely related to one of the sophismata to be found in Buridan and Bradwardine. Discussions of the medieval texts can be found in a number of places, including Hughes (1982), Jacquette (1991), Read (2010). For further references and discussion, see Égré (2022), from which I learned of the Cervantes. I will make a small comment on the medieval puzzle in due course, but given Mark's interest in fiction, I decided to concentrate on the Cervantes puzzle.

2 The Paradox Spelled Out

The judges find the reasoning disquieting, though the exact conclusion which troubles them is not spelled out. One way of doing so is as follows. For notation:

- $\mathcal{S}A$: t (the traveller) swears that his aim is to bring it about that A
- $\mathcal{T}A$: it is true that A
- $\mathcal{F}A$: it is false that A
- $\mathcal{O}A$: the judges ought to bring it about that A
- H : t is hanged
- L_1 : $\forall p(\mathcal{S}p \wedge \mathcal{T}p \rightarrow \mathcal{O}\neg H)$
- L_2 : $\forall p(\mathcal{S}p \wedge \mathcal{F}p \rightarrow \mathcal{O}H)$

The premises of the puzzle are:

1 $\mathcal{S}H$

2a L_1

2b L_2

3 $\mathcal{T}H \vee \mathcal{F}H$

4a $\mathcal{T}H \rightarrow H$

4b $\mathcal{F}H \rightarrow \neg H$

Reasoning from 3 by disjunction elimination:

- Suppose $\mathcal{T}H$
- Then $\mathcal{S}H \wedge \mathcal{T}H$ (by 1)
- But $\mathcal{S}H \wedge \mathcal{T}H \rightarrow \mathcal{O}\neg H$ (by L_1 and universal instantiation)
- So $\mathcal{O}\neg H$
- But H (by supposition and 4a)

- So $H \wedge \mathcal{O}\neg H$

On the other hand:

- Suppose $\mathcal{F}H$
- Then $\mathcal{S}H \wedge \mathcal{F}H$ (by 1)
- But $\mathcal{S}H \wedge \mathcal{F}H \rightarrow \mathcal{O}H$ (by L_2 and universal instantiation)
- So $\mathcal{O}H$
- But $\neg H$ (by supposition and 4b)
- So $\neg H \wedge \mathcal{O}H$

So in either case something that ought not to happen does so.

We may turn this into a formal dilemma. The judges are trying to decide what they ought to do. Whatever it is they do is what the law requires of them to do. So if they hang the person, that is what they ought to do, and if they don't, that is also what they ought to do. In other words, we may assume the extra premises:

5a $H \rightarrow \mathcal{O}H$

5b $\neg H \rightarrow \mathcal{O}\neg H$.

So, given the first horn of the dilemma, $H \wedge \mathcal{O}\neg H$, it follows that $\mathcal{O}H \wedge \mathcal{O}\neg H$. And given the second, $\neg H \wedge \mathcal{O}H$, it follows that $\mathcal{O}\neg H \wedge \mathcal{O}H$. Either way, $\mathcal{O}H \wedge \mathcal{O}\neg H$.

3 Analysis

The reasoning, then, establishes a legal dilemma. Perhaps the claim that such things exists is not too contentious. They can arise in the case of contracts which require incompatible obligations under certain conditions, for example.⁵ Of course, if the law puts us in a bind in this way, it *ipso facto* provides no guidance about what to do: one is damned if one does, and damned if one doesn't. What is best done can be determined only by

⁵See, e.g., Priest (1987), 13.1, and (2002), §4.

extra-legal considerations. And this is what Sancho invokes with his plain common sense.⁶

However, the dilemma established by this argument is of a somewhat unusual kind, and one might think there is something fishy about it—if only because familiar paradoxes have taught us to be wary when reasoning about truth.

The validity of the argument appears relatively unproblematic. To fault it, then, it would seem that one must contest one of the premises. 1 (what the traveller says) is simply part of the story. 3 is an instance Excluded Middle. True, Excluded Middle is often contested in the case of self-referential and sorites paradoxes; but such considerations hardly apply here. H is a plain vanilla empirical statement, verifiable by any observer viewing events—and there is nothing very vague about being hanged.

Some, following Aristotle, have claimed that contingent statements about the future are neither true nor false;⁷ and at least at the time when the incident is supposed to be occurring, H is about the future. I think the claim about future contingents is highly dubious, but even granting it, there is nothing, in fact, that requires the reasoning to be about the future. It could be performed retrospectively—for example, when the judges were ruminating about what they should or should not have done.

4a and 4b stand or fall together.⁸ So let us consider 4a. This is an instance of one half of the T -Schema, in a certain sense. Now, some have denied this (half) for a truth predicate. Such denials are deeply problematic;⁹ but in any case, what we have here is not the truth predicate but a truth operator, and virtually no one has denied the T -schema for this, simply because a truth operator can be interpreted as a redundant connective. Moreover, where instances of the T -Schema are denied for the truth predicate, those instances concern sentences which themselves involve truth, not plain vanilla empirical statements of the kind of H .

5a and its mate 5b also seem to stand or fall together, and appear un-

⁶In some jurisdictions there is a legal principle that, in cases where the law is in doubt (for example, a crucial term is ill-defined), the benefit of the doubt should go to the defendant. One might think that Sancho is appealing to this legal principle. However, there doesn't seem to be much doubt about what the law is here. Nor is it clear what the benefit of the doubt might be in this case.

⁷See Priest (2008).

⁸Indeed, one might simply define $\mathcal{F}A$ as $\mathcal{T}\neg A$.

⁹See, e.g., Field (2008), ch. 7.

problematic. If the judges hang the person, they do not do it out of caprice or free choice. They do it because the law obliges them to do so. Similarly for 5b.

This leaves 2a and 2b, and that these are the law is, again, part of the story. However, there are a couple of points worth noting. First, some have, in fact, held that statements of law, such as L_1 , are not true *simpliciter*.¹⁰ What are true are statements to the effect that they hold in the appropriate jurisdiction, e.g. (and ignoring the fictional context):

L'_1 In the jurisdiction of Barataria, L_1

Now, statements of this kind are indeed true or false, but so are statements such as L_1 . And legal reasoning requires statements of the form L_1 , not L'_1 . (Look at the reasoning of the judges). Of course, L_1 may not be true if one is in another jurisdiction. In that sense, the truth of L_1 is contextually dependent (as, then, is the dilemma to which it gives rise). But the judges know exactly what jurisdiction they are in.¹¹

Secondly, some reconstructions of the story (for example, that of Égré (2022)) omit ‘ \mathcal{O} ’ from the consequent of L_1 and L_2 . This seems to me a mistake. Normative language is part of the way the setup is described, e.g. (my italics): ‘he *shall be allowed* to pass’, ‘he *ought to die*’, ‘he *deserves to be hanged*’.

Note that, in this way, the Cervantes puzzle is different from the Buridan/Bradwardine puzzle mentioned in n. 4 above, which Hughes translates as follows (my italics):¹²

... Socrates arrives on the [bridge] and pleads urgently with Plato to let him cross. Then Plato, irritated, makes an oath and says: “Surely Socrates, if in the first proposition you utter you speak truly, I *will let you cross*; but be sure that if you speak falsely, I *will throw you in the water*”.

This concerns only what Plato *will do*, not what he *ought to do*.

One might suggest that since Plato’s utterance is an oath, it has implicit deontic operators. This would be a confusion. Making an oath is a illocutionary act (in Austin’s terminology). As such, the making of one may well have

¹⁰E.g., Beall (2017). He does appear to take such statements to be truth-apt.

¹¹See, further, Priest (2017), §8.

¹²Quoted by Égré (2022), p. 4.

deontic implications. (If you promise to do something, you ought to do it.) However, what is at issue here is the locutionary content of the utterance, and no part of this is deontic.

If the modal operators are, in fact, omitted, then the conditionals 2a and 2b are simple empirical statements. Thus, L_1 becomes: $\forall p(\mathcal{S}p \wedge \mathcal{T}p \rightarrow \neg H)$. An instance of this is: $\mathcal{S}H \wedge \mathcal{T}H \rightarrow \neg H$. If the traveller is hanged, this conditional is plain false, as, then, is its universal quantification. The law can make statements of legal right, obligation, etc, true or false by fiat, but it cannot make empirical statements (e.g., that New York is six miles from Washington) so.¹³

4 Dialetheism at The Gallows

We do, then, have a legal dilemma; that is, something of the form $\mathcal{O}A \wedge \mathcal{O}\neg A$. But that is not a legal dialetheia; that is, something of the form $\mathcal{O}A \wedge \neg\mathcal{O}A$.¹⁴ I think that there are legal dialetheias too.¹⁵ And in fact, the Gallows example can be tweaked to deliver one. (Naturally, this is a dialetheia only in Cervantes' fictional world. But there is no reason why the fictional situation described could not be actual.)

5a and 5b tell us that whatever the judges do in the context should be what is required by the law. But a weaker, and even more obvious, principle is that what they do should at least be *allowed* by the law. The judges should not act illegally. So let:

- $\mathcal{P}A$ be: the judges are (legally) permitted to bring it about that A

By definition, $\mathcal{P}A$ is $\neg\mathcal{O}\neg A$. Then we have:

6a $H \rightarrow \mathcal{P}H$

6b $\neg H \rightarrow \mathcal{P}\neg H$

¹³This, I take it, is essentially Buridan's solution. See Égré (2022), sec. 4. Égré's own view (sec. 5), if I understand it right, is that the sentence is both true and false, since its consequent is. However, I don't think there is anything very paradoxical or vague about being hanged.

¹⁴Of course if it is the case that $\mathcal{O}\neg A \rightarrow \neg\mathcal{O}A$, then a dilemma delivers a dialetheia immediately. But that principle is problematic precisely because A may be a dilemma.

¹⁵See, e.g., Priest (1987), 13.2, and (2002), §4.

The first horn of our puzzle argument tells us that $H \wedge \mathcal{O}\neg H$. Applying 6a gives us: $\mathcal{P}H \wedge \mathcal{O}\neg H$. That is $\neg\mathcal{O}\neg H \wedge \mathcal{O}\neg H$. The second horn of our puzzle argument tells us that $\neg H \wedge \mathcal{O}H$. Applying 6b tells us that $\mathcal{P}\neg H \wedge \mathcal{O}H$. That is, $\neg\mathcal{O}\neg\neg H \wedge \mathcal{O}H$. With a bit of help from the logical equivalence between A and $\neg\neg A$, we have: $\neg\mathcal{O}H \wedge \mathcal{O}H$. So in either case, $\exists p(\neg\mathcal{O}p \wedge \mathcal{O}p)$. Either way, there is a dialetheia.¹⁶

The only extra premises here are 6a and 6b, and as I have already said, these are even more obvious than 5a and 5b. It might be suggested that the definition of \mathcal{P} , standard though it, is not correct if we are taking the possibility of dilemmas and dialetheias on board; but this is not so. Even in this context, the definition holds with the natural truth and falsity conditions, namely that:

- $\mathcal{P}A$ holds at a world, w , if for some accessible world, w' , A holds at w' .
- $\neg\mathcal{P}A$ holds at a world, w , if for all accessible worlds, w' , $\neg A$ holds at w' .

The accessible worlds are the deontically possible worlds.¹⁷

The Gallows, then, take us from legal dilemmas to legal dialetheias.

5 Conclusion

This is obviously a very short note.¹⁸ I am sure that one might well want to take issue with some of the things I have said. I am also sure that many other interesting things can be wrung out of the Gallows puzzle. I leave it to Mark, with his love of paradoxes, to have the next word.¹⁹

¹⁶One might note that it does not follow from this that one of the premises of our argument is false (and so itself dialetheic), since in most paraconsistent logics if $A \vdash B \wedge \neg B$, it does not follow that $\neg A$.

¹⁷See, further, Priest (2022), §10. Note that these semantics do not verify the inference from $\mathcal{O}\neg A$ to $\neg\mathcal{O}A$.

¹⁸Unfortunately, other commitments left me too short of time to write the longer piece concerning Mark's views on intentionality, which I was originally planning for this volume.

¹⁹Many thanks go to Paul Égré and Daniel Nolan for their helpful comments on an earlier draft of this paper.

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