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# **ROSENCRANTZ AND GUILDENSTERN ARE NEVERTHELESS DEAD: THE HYPOTHETICAL ADOLESCENCE OF PRINCE HAMLET AND THE CONTESTED REMORSELESSNESS OF YOUNG OFFENDERS**

John R. Morss\*

## **ABSTRACT**

A young man stabs a defenceless elderly man to death, and remarks "I'll lug the guts into the neighbour room." Martha Grace Duncan has argued that such apparent remorselessness and other forensic features must be interpreted differently in children and young people as compared to adult defendants, because of developmental effects. Professor Duncan discusses a range of fictional as well as real examples in pressing her claim, and also appeals to psychiatric, psychological and psychoanalytic expertise. In order to examine the general validity of her argument, it is hypothesised here that a Duncanian adolescence defense has been presented for Prince Hamlet who, miraculously revived, now stands his trial for murder. It is argued that the "adolescence defense" is unsound in principle and that children and youth (whether or not as superannuated as the Prince of Denmark) should be treated in the same forensic manner as adults. If we respect children and youth, we must respect their autonomy however uncomfortable for us this may be: "So young, my lord, and true."

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\* Associate Head of School, School of Law, Deakin University.

We therefore transport ourselves for the purpose of the exercise to the Court of Denmark: not however the Court of King Claudius, but the Court of Justice. It is hypothesised here that a Duncanian adolescence defense has been presented for young Prince Hamlet who, miraculously revived, now stands his trial for murder.

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If it please the Court, Counsel for the People of Denmark is Mr Morss. As the Court knows, this unusual hearing arises from the unexpected recovery of Prince Hamlet, Crown Prince of Denmark, following the violent and tragic affray at the Castle of Elsinore in which he was recently involved. It will be shown that Hamlet is a serial murderer with a brutal disregard for life. The Prince's heinous and incorrigible character may be readily deduced from his comments on lawyers.<sup>7</sup>

The People's claim is that the defendant Prince Hamlet was responsible for a series of up to nine murders and should suffer the appropriate penalty. Relying on the expert opinion of Professor Duncan my learned friend, Counsel for Defense, has however sought to persuade the Court that (notwithstanding lack of evidence as to his actual age<sup>8</sup>) Hamlet's actions, and his responses to the results of those actions, should be attributed to his youth.<sup>9</sup>

More specifically, Defense claims that Hamlet was acting as an "adolescent" when the criminal acts were carried out. This is said to be evident for a number of reasons. We are asked to observe the nature of his attachment to his mother,<sup>10</sup> his swings of mood

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<sup>7</sup> William Shakespeare, *Hamlet*, in *Shakespeare: Complete Works* (Craig ed.) (1974) [hereafter *Hamlet*] Act V Scene i line 104 at page 901.

<sup>8</sup> If the gravedigger's testimony is accepted, the skull of Yorick, a person once known by Hamlet, had been in the earth for 23 years: *Hamlet* V i 190 at 902. This witness, it should however be noted, is also known as First Clown.

<sup>9</sup> Hamlet's youth is for example mentioned by Laertes, *Hamlet* I iii 7 at 874; by Polonius, *Ibid* I iii 124 at 875; and by Ophelia, *Ibid* III i 168 at 887.

<sup>10</sup> Hamlet's Oedipal status is analysed by Ernest Jones, "Hamlet and Oedipus," in *Shakespeare's Hamlet, a Casebook* (John Jump ed., 1968); for Jones, "the influence of the old attraction for the mother is still exerting itself," at 53, and the "normal solution" to the Oedipal problem (succession) is for Hamlet blocked by his uncle's seizing of the crown, at 61. In Hamlet's own words, "Sir, I lack advancement": *Hamlet* III ii 361 at 890. Jones' account, is endorsed by Erikson, above n 4, 237. Jones also cites at 60 the term applied

## INTRODUCTION

Duncan<sup>1</sup> has argued that remorselessness (that is to say, evidence suggestive of lack of remorse) in a criminal defendant should be treated quite differently when the defendant is a young person as compared to the situation of an adult defendant. For Duncan, apparent remorselessness in a young person may arise for a number of reasons including cognitive immaturity and not unrelatedly, peer pressure (conformity).

Discussion of real murders and of fictitious ones is closely interwoven in Duncan's account, sometimes within a single sentence as with a reference to Camus' novel *The Stranger* in discussing the (factual) murder of Fred Harper.<sup>2</sup> While it is not unusual to bring factual (historical) figures into fiction,<sup>3</sup> the amalgamation of the fictional and the factual in Duncan's account is innovative and challenging. Duncan discusses Cordelia, Juliet, Macbeth, Hamlet (on sleep), as well as many post-Shakespearean characters. This stylistic precedent is followed here, trusting that the seriousness of the underlying issues redeems any apparent inappropriateness. The defendant is the notoriously youthful Hamlet, Prince of Denmark, a model of adolescence<sup>4</sup> and an embodiment of the "innocent indignation of youth,"<sup>5</sup> a person "too young to carry out his duty [of revenge] [who] therefore frets and sulks."<sup>6</sup>

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<sup>1</sup> Martha Grace Duncan, "'So Young and So Untender': Remorseless children and the expectations of the law" (2002) 102 *Columbia Law Review* 1469 [hereafter "Duncan"]. To emphasise, a Duncanian defense of defendant Hamlet is in its entirety an hypothetical extrapolation by myself, for which the gracious Duncan has no responsibility. It need hardly be said that Professor Duncan's article is an extremely stimulating one, to which the present author is indebted.

<sup>2</sup> Duncan, above n 1, 1496; on *L'Etranger* [*The Stranger*] also see Richard Posner, *Law and Literature* (rev ed) (1998) [hereafter "Posner"] 41.

<sup>3</sup> Posner, above n 2, 384.

<sup>4</sup> Hamlet is discussed in detail by psychologist Erikson as a model for certain aspects of adolescence: Erik Erikson, *Identity: Youth and Crisis* (1968) 236-259 [hereafter "Erikson"]; according to Erikson Hamlet demonstrates "identity confusion" at 238, and if no longer pubertal, is a "postadolescent," at 258, characterised by the "defensiveness of [his] forever adolcescing ego," at 259. On Erikson and adolescence theory, see in general, John Morss, *The Biologising of Childhood* (1990) Ch 8.

<sup>5</sup> Posner, above n 2, 90.

<sup>6</sup> Ibid 83 n53.

from introspective asceticism<sup>11</sup> to violent action and back again,<sup>12</sup> and the distorted nature of his time perception (Hamlet consistently underestimates the time that elapsed between his father's funeral and his mother's marriage<sup>13</sup>). Further support is said to be given to the proposal by Hamlet's (apparently immature) refusal to believe that his father is really dead: Hamlet does not respond to his mother's comment that "all that live must die,"<sup>14</sup> instead responding to her immediately preceding remark.<sup>15</sup> Hamlet's adolescent status, it is proposed by Defense counsel, provides variously a defence and/or a mitigation with respect to the long list of charges with which he is faced.

The People will show that the arguments of Defense counsel are without merit. We shall not do this by seeking to discredit the attribution of "adolescence" as such to Hamlet. This could not in any case be achieved, for example by bringing persuasive evidence of his chronological age, given that as Professor Duncan observes, the attribute of adolescence is by definition an individually varying one.<sup>16</sup> More rigorously, we shall demonstrate that adolescence could not be a defence in any

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to Hamlet by Otto Rank, *Phantasie-mensch*, and to be ruled by phantasy is (according to psychoanalytic theory) characteristic of childhood and adolescence: Duncan, above n 1, 1478. Also see Martha Grace Duncan, *Romantic Outlaws, Beloved Prisons: The unconscious meanings of crime and punishment* (1996); Posner, above n 2, 90.

<sup>11</sup> "O! that this too too solid flesh would melt...": *Hamlet* I ii 129 at 873; also I iv 17 at 876 (Hamlet's contempt for "heady-headed revel").

<sup>12</sup> Anna Freud says of adolescents, "their changeableness is a commonplace": Anna Freud, *The Ego and the Mechanisms of Defense* (1966) 168. New attachments can be "passionate and exclusive" but are of short duration, and such new love-objects are "abandoned without any consideration for their feelings," at 167. The adolescent may have "an insatiable desire to think about abstract subjects, ... and to talk about them;" however "this fine intellectual performance makes little or no difference to his actual behavior." His concentration remains focused "upon a single point – his preoccupation with his own personality," at 159-160. "The tendency of adolescents to brood on the meaning of life and death reflects the destructive activities in their own psyche." Similarly, "[a]dolescents are excessively egoistic, regarding themselves as the centre of the universe..., and yet at no time in later life are they capable of so much self-sacrifice and devotion... At times their behaviour to other people is rough and inconsiderate, yet they themselves are extremely touchy," at 137–138.

<sup>13</sup> Said to be typical of adolescence, Duncan, above n 1, 490.

<sup>14</sup> *Hamlet* I ii 72 at 872.

<sup>15</sup> According to Duncan, above n 1, 1479, a deficient understanding of the finality of death is characteristic of the immature mind.

<sup>16</sup> Duncan, above n 1, 1480 n51.

event. We shall in this regard, address some of Professor Duncan's arguments directly. Like her, we will where appropriate refer to fictional illustrations to illuminate the present all too factual circumstances.

We shall deal with each alleged murder in turn, commencing with those for which the most conclusive evidence is available.

### CLAUDIUS, KING OF DENMARK

It is not contested that Hamlet stabbed Claudius (his uncle) with a sword that he believed to be poisoned, and then (when the victim said "I am but hurt")<sup>17</sup> forced him to drink poison. His words immediately after, "Here, thou incestuous, murderous, damned Dane ... follow my [deceased] mother" show no signs of remorse, rather the opposite.

Defense counsel, relying on Professor Duncan, asks the Court to accept that in his adolescent state, Hamlet denies to himself what he has done (as an "ego defense mechanism") or, in the alternative, is not fully aware of all the conceptual dimensions to death. He may also, she suggests, have been unconsciously affiliating with his delinquent sub-culture (see *Rosencrantz and Guildenstern*, below) thus to some extent putting on a show of machismo. Alternatively he may have been so intensely aware of the consequences of his *earlier* actions, that he was now acting in a desperate manner.<sup>18</sup>

To the extent that any of these arguments may in principle apply to a person of any age – for example a person of any age may deny the reality of what they have done – they are in principle valid. None of them, we submit, gives the Court any substantial grounds for clemency in any case. Most of all it is our claim that the "adolescent" dimension contributes nothing to the argument. Hamlet's actions demonstrate rationally coordinated movements designed to kill<sup>19</sup> (indeed designed to kill in three different ways). His words supply proof of the requisite intent.<sup>20</sup>

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<sup>17</sup> *Hamlet* V ii 338 at 907.

<sup>18</sup> Allegedly like Tilley, Duncan, above n 1, 1508 n242.

<sup>19</sup> Somewhat like obtaining, loading and firing a rifle at a friend, like Kocher (Duncan, above n 1, 1477).

<sup>20</sup> Hamlet's words uttered shortly after the death of Claudius, "I am dead, Horatio ... Horatio, I am dead" were manifestly untrue. People will not

## LAERTES

It is not contested that Hamlet stabbed Laertes with a rapier during a sword-fight. The sword had poison on its tip, a fact of which Hamlet now denies all prior knowledge, although he exchanged swords with Laertes earlier in the bout. Hamlet did not make any comment on the fatal injury he had caused to Laertes, turning his attention to his uncle (whose death however occurred before that of Laertes). This apparent callousness is for Defense Counsel to be interpreted in relation to Hamlet's "developmental stage".<sup>21</sup> The People however submit that it demonstrates a sociopathic personality.<sup>22</sup>

## ROSENCRANTZ AND GUILDENSTERN

These two former school-friends of Hamlet were executed by the King of England on the basis of a supposed official communication from Claudius. The communication was forged by Hamlet. Hamlet made use of his knowledge of royal styles of communication and of his access to a similar seal, and perhaps more significantly, of his friends' trust in him in both sleeping at the same time on board ship even though they were under instructions to guard him.<sup>23</sup>

Defense suggests that Hamlet had cause to fear the same fate had he accompanied his friends to England. (Hamlet claims to have given the original document, supposedly commanding his own execution, to Horatio, but Defense has not presented it in evidence). Hamlet's actions are thus presented as a kind of self-

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however press the claim that Hamlet was going to sleep in a forensically suspicious manner as with Chris Thomas, Duncan, above n 1, 1486.

<sup>21</sup> Difficulties with the concept of developmental stage, as explanatory device, are discussed by Erica Burman, *Deconstructing Developmental Psychology* (1994); John Morss, *Growing Critical: Alternatives to developmental psychology* (1995); Rex Stainton Rogers and Wendy Stainton Rogers, *Stories of Childhood: Shifting agendas of child concern* (1992). Empirical limitations of a stage approach (a consequence of the "ideal" character of a linear stage model) are indicated by Duncan, above n 1, 1479 n49. The stage model is at best an approximate and heuristic general pattern, hardly the precise and particular stuff of a criminal trial.

<sup>22</sup> Psychiatric opinion on this point would be otiose however since it is direct evidence of crime rather than expert opinion on which the prosecution relies.

<sup>23</sup> *Hamlet* III iii 1 at 891.

defense: like Tilley,<sup>24</sup> he is said to have felt genuinely threatened due to a heightened, adolescent sense of vulnerability. Further, says the Defense, Hamlet's actions reflected a delinquent sub-culture in which displays of aggression and violence are *de rigueur*. This subculture is said to have been demonstrated by Hamlet's aggressive actions (the subject of separate proceedings) when the ship on which all three were sailing to England was contacted by a Customs and Excise launch (later referred to by Hamlet, fantastically, as a "pirate ship").<sup>25</sup>

Perhaps it is being claimed that Hamlet felt his friends were "dissing" him. It would in any event be ironic if such a delinquent sub-culture, impacting by definition on Rosencrantz and Guildenstern themselves as well as on their boyhood friend Hamlet, should be appealed to in defense of their cold-blooded murder.

## POLONIUS

Polonius, elderly father of Laertes and Ophelia, was stabbed to death by Hamlet in his mother's chamber. Hamlet then continued haranguing his mother. Defense argues that Hamlet thought Polonius (who was standing behind a hanging decoration) was either a rat, or the king (Claudius). Hamlet did indeed say within a few minutes "I do repent,"<sup>26</sup> but continued immediately with expressions of heavenly purposiveness, thus denying responsibility. A few minutes afterwards he said "I'll lug the guts into the neighbour room" which clearly denotes a callous attitude towards his elderly victim. Hamlet was known to have taunted and ridiculed Polonius in previous days. Finally Hamlet joked in a heartless manner about Polonius' decaying dead body.<sup>27</sup>

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<sup>24</sup> Duncan, above n 1, 1511.

<sup>25</sup> On the delinquent sub-culture of staunchness, Duncan arguably misreads the 1938 film *Angels with Dirty Faces* (Duncan, above n 1, 1500 n179); James Cagney as the death-row hoodlum does indeed demonstrate heroism (albeit known only to the priest and to the viewer) in pretending to be afraid when he is not, in order to educate his erstwhile followers. Actor Sean Penn's representation in the 1995 film *Dead Man Walking* (discussed by Duncan, above n 1, 1473 n18) is surely more persuasive.

<sup>26</sup> *Hamlet* III iv 173 at 894.

<sup>27</sup> *Hamlet* IV iii 18ff at 895.



## GERTRUDE AND OTHERS

There is suggestive evidence that Hamlet may also have been responsible for further deaths. Gertrude Queen of Denmark, Hamlet's mother, died by drinking poison from a cup. Hamlet had refused to drink from that particular cup a few moments previously although, being in the midst of a sword-fight, he was undoubtedly thirsty.<sup>28</sup> After her death he said "wretched queen, adieu!;" and he had previously been abusive of her, upbraiding her for her recent marriage. The People submit that Hamlet killed his mother with poison.

### *Ophelia*

Ophelia, Laertes' sister, was Hamlet's former girl-friend. She died by drowning shortly before the Laertes' duel with Hamlet described above. The People concede that no direct evidence links Hamlet with her death. However Hamlet is known to have spoken in an abusive manner to Ophelia on a previous occasion and told her angrily to go "to a nunnery." Moreover he may well have believed her to be carrying his child although this was in fact not the case.

### *Old Hamlet*

Notwithstanding that a serpent's sting was at the time held responsible for Old Hamlet's death, the recent inquest demonstrated that death was caused by poison introduced into the ear. Young Hamlet's knowledge of the true cause of death, displayed by him through his instructions to the players, has been explained by him only on the basis that he was given the information by a ghost. The People submit that young Hamlet murdered his father, by this means.<sup>29</sup>

### *Yorick*

Hamlet admits having known Yorick the king's jester when he was young.<sup>30</sup> There is no evidence on the cause of Yorick's death. However, Hamlet told Horatio and the grave-digger that he had frequently kissed Yorick's lips and that Yorick had "borne me on his back a thousand times." According to Defense submission, this is suggestive of an abusive relationship (real or

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<sup>28</sup> *Hamlet* V ii 298 at 906.

<sup>29</sup> Further, Hamlet stated "I... That have a father kill'd, a mother stain'd": *Hamlet* IV iv 57 at 896. The phrase is ambiguous, and suggestive of a "Freudian slip," consistent with the fact that murdering the father is of course a classical Oedipal fantasy.

<sup>30</sup> *Hamlet* V i 202 at 902.

imagined) between the infant Hamlet and the “whoreson mad fellow” Yorick, supporting a submission of self-defense or provocation. The People observe that Hamlet jokes about Yorick’s skull and moreover, sings a song immediately after discussing the dead Yorick,<sup>31</sup> conduct similar to that alleged in the case of Tilley.<sup>32</sup>

In several of these cases, conduct of the kind discussed by Professor Duncan – conduct apparently indicative of remorselessness – was displayed. Alongside all the indications of adolescence noted above, Prince Hamlet manifests the whole spectrum of forensic conduct that Professor Duncan has discussed. Unless it is to be maintained that Hamlet is feigning adolescence, as he may perhaps be feigning madness, then Professor Duncan would opine that the Court should interpret that conduct in the light of his adolescence.

The People disagree. Irrespective of age or “stage” Hamlet’s actions demonstrate calculated criminality, perhaps most striking (in terms of advance planning) in the case of Rosencrantz and Guildenstern, and the deliberate infliction of deadly injury in other cases. Like an adult facing the same charges, Hamlet is entitled to all legitimate defense arguments and to wide-ranging consideration of grounds for mitigation of punishment, if convicted. Hamlet the adolescent is not entitled to a qualitatively different form of justice in which the expert opinion of psychiatrists or psychoanalysts – opinion based on scientific generalisation – displaces the uniform procedures of the criminal system.

In conclusion: the adolescence defense lacks merit on principle. There is no good reason for interpreting Hamlet’s actions, and his reactions, any differently than would be the case if he were treated straightforwardly as adult. Callousness is callousness and an excessive sense of one’s own vulnerability undermines a claim of self-defense. Proportionality of reaction is of the essence. Like Rosencrantz and Guildenstern, the victims of the young offenders described by Duncan are dead, as a consequence of deliberate acts.

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<sup>31</sup> *Hamlet* V i 201 at 902.

<sup>32</sup> Duncan, above n 1, 1509.

Adolescence does not call for special forensic treatment, at least not of the kind advocated by Duncan. There is no more (if no less)<sup>33</sup> reason to look for alternative meanings to utterances or conduct when the defendant is a child or adolescent, as when she or he is adult. Developmental stages *should* be “disregarded” for that theoretical apparatus is contested if not fatally flawed.

Even treating empirical findings generously, developmental claims always operate at a level of generality that is inadequate for the forensic process.<sup>34</sup> It seems unlikely that developmental stages in adulthood (such as the “mid-life crisis”) would be acceptable in exculpation, however authoritative the expert opinion. Although to express it this way might be to give too much ground to the developmental argument, it does seem particularly unpersuasive to claim that a seventeen-year old (Jeanice DeWester) should be given special consideration on developmental grounds, having shot and killed a defenceless woman with a rifle.<sup>35</sup>

Prince Hamlet is an exciting and complex person, whose motivations and self-presentations undoubtedly deserve close scrutiny. The same may be said of many other criminals. But while that may be one of the tasks of literature it is not the task of a criminal justice system. It is not a valid criticism of the trial of a child that “the real child was not revealed”<sup>36</sup> any more than it would be a valid criticism to say in the trial of an adult, “the real adult was not revealed.” The question is whether justice was done, and justice is a limited and somewhat mundane matter.

Legal practice is not yet settled on the matter of childhood and competence, for example in relation to consent to medical treatment.<sup>37</sup> What is clear is that recognising autonomy in young persons raises especially challenging issues when they choose to

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<sup>33</sup> There may be grounds that are of general validity (ie, independent of defendant’s age) for a creative interpretation of apparent remorselessness and similar conduct, but these would of course undermine Duncan’s argument for privileging the young.

<sup>34</sup> It is after all the particular act of a particular person that is of interest to the Court.

<sup>35</sup> Duncan, above n 1, 1519; it is moreover suggested by Duncan that DeWester’s sophistication and hence intelligence should be considered favourable factors in her defense, a troubling precedent were one’s next client to be a young person of more limited abilities.

<sup>36</sup> Duncan, above n 1, 1526.

<sup>37</sup> Michael Freeman, “The Child in Family Law” in Julia Fionda (ed), *Legal Concepts of Childhood* (2001) 183.

carry out criminal or self-harming acts.<sup>38</sup> Defining childhood or adolescence as “safe harbours” with respect to culpability does not address these issues but rather evades them. For example, if we wish to give the evidence of child witnesses, at face value, the status of that of adults, then it would be inconsistent not to take the actions and statements of young defendants also at face value. Their youthfulness as such is simply beside the point.

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<sup>38</sup> John Morss, “The Status of Child Offenders under International Criminal Justice: Lessons from Sierra Leone” (2004) 9 *Deakin Law Review* 213.