

DETERMINATION OF CRIMINAL RESPONSIBILITY USING THE OEDIPUS SCENERY AS A CASE STUDY*

Abstract

Just like Lon Fuller's Speluncean Explorers portray the seemingly impossibility of separating the two streams of ever flowing water that may not meet in the realm of legal jurisprudence, to wit, the positivists' and the normative school of thoughts. On the similar vein, Oedipus underscores the inevitability of deterministic inclinations on one's life. Oedipus was destined and determined to kill his father and marry his mother which against all odds to avert it came into reality. Consequently, this scholarly investigation is aimed at the identification of the offences emanating from the acts of Oedipus in fulfilling the dictates of nature, and to juxtapose same into judicial examination under the provisions of section 24 of the Criminal Code, to the effect that a person is not criminally responsible for acts or omissions which are independent of the person's will. Hence, it therefore follows, that the advancements and advocacies in philosophical determinism can be used in the determination of criminal responsibility of a defendant standing criminal trial. In bringing this herculean task into practical reality, meta-analytical styles and doctrinal methods of academic investigation were adopted to buttress the intendment of the paper.

Keywords: Criminal Responsibility, Oedipus Scenery, Determination, Case Study

1. Introduction

Oedipus complex in the realm of psychoanalytical theory deals with the concept of psychosexual stages in the growth and development of children.¹ The concept simply means the earnest desire for an offspring to have sexual passion for the parent of the opposite sex and acrimonious concomitant sense of bitter rivalry with the parent of the same sex.² It is an important psychological stage usually common in the normal growth and developmental processes of children up to at least the age of twelve years.³ Oedipus complex as a conceptual idea was first postulated by Sigmund Freud,⁴ and was actually popularised and put into wide circulation in 1910.⁵ By Freud's exponential projections, the psychosexual stages of children development include the following phases: oral, anal, phallic, latency and genital.⁶ It is of Freud that the most important of all the stages in the chain of development is the phallic.⁷ It spans through the ages of three to five, where children inertly choose seemingly substitutes as play mates of the opposite sex to replace the psychosexual desires in lieu of the attraction from the opposite sex parent.⁸ The female analogous counterpart of Oedipus complex was developed by one of Freud's earlier students, Carl Jung which is referred to as Electra Complex, it is phrased after a mythical image who assisted to have her mother murdered and in-turn married her own father.⁹ Howbeit, the scholarly appreciations of the species of Oedipus Complex, Electra Complex, The Gods Are Not To Blame, The American Ed'King, and others are cloned and mimic creativity from the legendary Oedipus hero of the ancient Greek's kingdoms of Thebes and Corinth.¹⁰

In all the versions of Oedipus from the different parts of the world portray one central theme which is the inevitability of escaping from the webs of predestined ascriptions. Usually projected in simple expression, as that which shall be, shall always be irrespective of times and seasons. Flowing therefrom, this academic investigation is intended to identify the likely offences resulting from the actions and inactions of Oedipus. And to subject same into real judicial examination under the provisions of Section 24¹¹ in order to judicially assess and evaluate it Oedipus would be convicted and sentenced from the criminal allegations emanating from his actions and inactions.

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¹ A. S. Longhurst, What is the Oedipus Complex? [2019] (2) (3) *Journal of Medical Reviews*, 1.

² www.Britannica.com/science . Accessed on Thursday the 24th day of December 2020 at about 7:15 hours.

³Y. Liu, and C. Wang, 'Oedipus Complex in Literature Works' [2011] (2) (6) *Journal of Language Teaching and Research*, 1.

⁴ In one of his famous books entitled 'Interpretation of Dreams.' Published in 1899.

⁵ A. S. Longhurst, What is the Oedipus Complex? [2019] (2) (3) *Journal of Medical Reviews*, 3.

⁶ *Ibidem*.

⁷ *Ibidem*.

⁸ <https://en.m.wikipedia.org/Oedipus>. Accessed on Thursday the 24th day of December 2020 at about 7:15 hours.

⁹ Encyclopaedia Britannica

¹⁰E. Keuls, *The Reign of the Phallus: Sexual Politics in Ancient Athenas* (Berkeley and Los Angeles Publications, 1993), 292.

¹¹Criminal Code Act, Cap C38 Vol. 4, Laws of the Federation of Nigeria (LFN), 2004, which states thus: 'Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, ...'

In doing so, utilisation would be made of the advancements, tenets and advocacies from philosophical determinism in the assessment and determination of criminal responsibility of a defendant standing criminal trial in the law court.

2. Practical Illustration

In specific correlation to this academic investigation, Oedipus as a term derived its root from the ancient Greek kingdom of Thebes ruled by king Laius. Oedipus as a part of morpheme literally means swollen foot.¹² He was a Greek mythical legendary hero who unknowingly, but determined and destined by the gods to murder his biological father and marry his own mother who gave birth to him.¹³ Oedipus represents two principal themes in the contemporary voyage of global human existence which are: flawed of humanity on earth. Secondly, individual's role in the course of determined destiny in this ever floating material universe made up of matters in the form of neutrons, protons and electrons.¹⁴ In contextual reality of the spirit and philosophy of this scholarly appreciation, in the royal palace of King Laius and Queen Jocasta was the procreation of a male neonate. And in accordance with the mediaeval traditional practices of the ancient Thebes, an inquiry into divinity about the life, times and future of the newly procreated baby boy was launched in the oracle of Apollo at Delphi.¹⁵ The oracle revealed that the boy is negatively determined or destined to kill the king and marry his own mother.¹⁶ In an attempt to avert the great abomination and taboo, King Laius pierced the foot of the newly born baby boy and handed him over to a domestic servant to be killed, but the domestic servant had pity on the neonate and left him to die on his own accord in the mountainous region without straining his own hands with the blood of an innocent neonate.¹⁷ However, another domestic servant had pity on the innocent neonate and handed him over to another domestic servant, who handed him over to King Polybus and Queen Merope of Corinth who were barren.¹⁸ The foot that was pierced by King Laius was swollen hence the name of the boy Oedipus by the palace of Corinth.¹⁹

Oedipus as a young lad was groomed and nurtured with all the paraphernalia as the future king of the ancient kingdom of Corinth. When he had grown into a full-fledged man of Corinth, a drunk called him a bastard,²⁰ one who did not belong to the kingdom of Corinth.²¹ He was not comfortable with that ascription, he came home and asked his supposedly parents who out-rightly denied anything of that nature. Not still satisfied he went to enquire from the same oracle of Apollo at Delphi the same oracle where his father went and his sordid destiny of killing his father and marrying his mother was revealed to him. With the intention not to allowed such obnoxious destiny of extreme calamity to come to pass, and unknowingly to him he was heading towards fulfilling his dastard destiny he decided not to return to Corinth, but headed towards the ancient kingdom of Thebes.²² On his way he met an old man wherein quarrelled ensued between Oedipus and the old man on the right of way of their chariots who should use first and insulting words on his nativity, Corinth. The two charioteers fought and Oedipus defeated the other side and killed the old man where three roads met.²³ On reaching the kingdom of Thebes, there was a problem between the Sphinx and the Thebans. Oedipus asked, if anyone defeats the Sphinx what shall be done to him, Creon the administrator of the kingdom after the demised of King Laius, said.²⁴ Anyone who defeats and get rid of the Sphinx shall be the king of Thebes and marry the youngest queen of the recently murdered king, Laius. Oedipus took up the challenge and fought with the Sphinx and got triumph over them.²⁵ The youngest wife of the king and the throne were given to him. Oedipus who unknowingly to him, the youngest wife of the deceased king was his own mother knew her carnally and the abominable union produced four children two males and two females who were Eteocles and Polynices; and Antigone and Ismene respectively.²⁶

¹²Encyclopaedia Britannica//wikipedia.org//Oedipus. Accessed on Thursday the 24th day of December 2020 at about 7:15 hours.

¹³ *ibidem*.

¹⁴Y. Liu, and C. Wang, 'Oedipus Complex in Literature Works' [2011] (2) (6) *Journal of Language Teaching and Research*, 1.

¹⁵ L. Edmunds, *Oedipus: Gods and Heroes of the Ancient World* (Routledge Press Incorporated, 2006).

¹⁶ A. L. Brown, The End of the Seven Against Thebes [1976] (26) (2) *Classical Quarterly Reviews*, 206.

¹⁷ S. Williams, *Dictionary of Greek and Roman Biography and mythology* (London University Press, 1873).

¹⁸ I. Dallas, *Oedipus and Dionysus* (Freiburg Press, 1991)

¹⁹ T. T. Gaillard, *Transgenerational Healing of the Oedipus at Colonus* (Genesis Editions, 2020).

²⁰ G. David and L. Richards, *Oedipus the King* (2nd edition, Chicago University Press, 1991).

²¹ Encyclopaedia Britannica//wikipedia.org//Oedipus.

²²Y. Liu, and C. Wang, 'Oedipus Complex in Literature Works' [2011] (2) (6) *Journal of Language Teaching and Research*, 7.

²³ www.Britannica.com/science . Accessed on Thursday the 24th day of December 2020 at about 7:15 hours.

²⁴ www.Britannica.com/science . Accessed on Thursday the 24th day of December 2020 at about 7:15 hours.

²⁵ S. Williams, *Dictionary of Greek and Roman Biography and mythology* (London University Press, 1873).

²⁶ A. L. Brown, The End of the Seven Against Thebes [1976] (26) (2) *Classical Quarterly Reviews*, 206.

3. Identification of Criminal Offences

Now from the foregoing scenario expatiated hereinabove, which is the very crux and the linchpin of this paper, is that prima facie, Oedipus had committed grievous offences of treason, murder, treachery, and incest. These offences are all felonies, the first three are punishable with death and the fourth one is imprisonment for seven years. The question beckoning for answer is, by the inbuilt character of mental element (*mens rea*) in criminal jurisprudence; could Oedipus be convicted and punished for those offences? The statutory provisions of the Criminal Code would response negatively to the questions posed above. Now by the provisions of Sections 315 and 319 (1),²⁷ which respectively state thus:

Any person who unlawfully kills another is guilty of an offence which is called murder or manslaughter according to the circumstances of the case.

Subject to the provisions to this section of this Code, any person who commits the offence of murder shall be sentenced to death.

Again the provision of Section 2(1),²⁸ states as follows:

Any male person who has carnal knowledge of a female person who is to his knowledge his grand-daughter, sister, or mother is guilty of a felony and is liable to imprisonment for seven years.

Juxtaposing same with the litmus test of mental element as a fundamental requirement for the proof of any offence and the provisions of Section 24,²⁹ Oedipus shall not be convicted of any of the offences that may be proffered against him. This is because the offences of murder and incest perpetrated through Oedipus were determined acts by the interactive forces of law of nature and the cosmic powers even before he was born. He never negotiated to have such an abominable destiny, it was bequeathed to him by the universal forces quite independent of his own negotiations, but was configured right deep down in his DNA. By these deterministic acts, he only fulfilled the dictate of the universal forces by playing the script already written and embedded in his subconscious being independent of his will and as such very difficult to be held criminally responsible by the express provisions of Section. 24³⁰ The priest of the oracle of Apollo at Delphi who is very vast and knowledgeable in the customs, traditions and the customary laws of the kingdom of Thebes and who saw his determined hideous destiny and pronounced upon should be called by the defence to testify as a vital expert witness,³¹ which the law of evidence allows it to be done. With respect to the offence of reason, he never knew the old man at the cross-road was the King of Thebes. The fight that ensued between the two sides was as a result of an insult and affront to his supposedly nativity Corinth. And as the fight started, he ought to defend himself in self-defence and his men which eventually reigned supreme over the other side and the old man was a victim of altercation. On the offence of incest, the specific mental element (*mens rea*) of knowing that the female person is his grand-mother, grand-daughter, sister, or mother cannot be proved according to law in that Oedipus never knew that Queen Jocasta was his own mother, after all he has escaped from own nativity, Corinth. Therefore, nothing in his wildest imagination could fixed Queen Jocasta as his mother and vice-visa on the part of Queen Jocasta. For Oedipus, which is reasonable and honest believe³² was of Corinth nativity and King Polybus and Queen Merope were his biological parents and none other. By the practice and procedure of criminal law and its jurisprudence, where the mental element of an alleged offence is not proved beyond reasonable doubt and to the satisfaction of the court as required by law, the defendant shall be entitled to be discharged and acquitted from the criminal responsibility. Therefore, by the philosophical dictates of the law, Oedipus shall be exonerated, exculpated, acquitted and discharged from the criminal offence of incest for failure to prove the mental element of the offence. Prior knowledge of knowing the female person, as his mother, in the instant case Queen Jocasta,³³ is sine-qua-non to the establishment and proof of the offence of incest. Consequently, Oedipus could not be held liable for the alleged offence of incest.

²⁷ Criminal Code Act, CapC38, vol.4, Laws of the Federation of Nigeria (LFN) 2004.

²⁸Punishment of Incest Law, CAP 110 Laws of Eastern Nigeria (L.E.N), 1963. Applicable to Bayelsa State and it is being compiled as: Punishment of Incest Law, Cap P22, Vol.4 Laws of Bayelsa State of Nigeria (L.B.N), 2006.

²⁹Criminal Code Act, CapC38, vol.4, Laws of the Federation of Nigeria (LFN) 2004. Which inter-alia states thus: 'Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.'

³⁰ *Ibidem*.

³¹Section 68 (1) and (2) of the Evidence Act, 2011, which stipulates as follows: (1) When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to the identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to the identity of handwriting or finger impressions, are admissible. (2) Persons so specially skilled as mentioned in subsection (1) of this section are called expert.

³²Section 25 of the Criminal Code Act, defence of mistake of fact.

³³Mother, and wife to Oedipus the king by conquest of the Sphinx.

On the second carom the defence of 'Mistake of Fact' as contained under the provisions of Section 25³⁴ ought to avail him in that his belief of running away from Corinth to avert the killing of the one he thought was his father, King Polybus and marrying the one he thought was his mother, Queen Merope were honest and reasonable in all legal ramifications. Even the fight at the meeting of three roads and the defeat of the Sphinx were all honest and reasonable belief to his knowledge that he was protecting the land of his sojourn. The bequeathed of the throne and the youngest wife of King Laius as rewards of bravery and expertise in military tactics and legendary were received with all sense of honesty and reasonableness. He, Oedipus never knew that Thebes was his own natural place of birth and kingdom, and that King Laius and Queen Jocasta were his biological parents. And by the specific provisions of the Criminal Code, acts and omissions which were done or made with an honest and reasonable believe are legally excusable from criminal liability. Therefore, the defence of 'Mistake of Facts' could as well avail Oedipus in all the offences that might be proffered against him in the law court.

Consequently, Oedipus acts were determined and were honestly and reasonably believed to be the raw facts and circumstances which by virtue of divine providence were pronounced upon by a widely accepted oracle well known and respected within the vicinity and around the enclave of Thebes. Hence, Oedipus acted in accordance with the determined acts quite independent of his will. Furthermore, Oedipus killed King Laius in a belligerence or war like circumstances and by all global humanitarian protocols and standards killing in belligerence atmospheres are excusable from criminal prosecution.³⁵ Wherefore, the provisions of Sections 24 and 25³⁶ are indispensable and inevitable tools in the assessment and evaluation of Oedipus criminal liability. Hence, the knowledge derivable from the philosophical concept of determinism is indeed relevant and quite applicable for use in the determination of criminal responsibility of a defendant standing criminal trial.

4. Conclusion

From the light of the foregoing practical illustrations, Oedipus was only playing the scripts as written by nature and the interactive cosmic powers from the beginning of time. The actions and inactions were perpetrated through him as mere instrument and mouth piece of cosmic forces to express that which had already been deposited in him unknowingly. It therefore follows, that the actions and inactions ascribed to him were absolutely independent of his will, and therefore not intended, Consequently, Section 24,³⁷ shall wholesomely exculpate him from all the likely criminal offences of treason, murder, treachery, and incest he would have been convicted. Wherefore, this scholarly appreciation has no hesitation in recommending to the bar and bench that the advancements and advocacies in philosophical determinism are handy tools and weapons in the hands of the defence. And more particularly, the sworn Judex in the determination of criminal responsibility of a defendant in the course of criminal proceedings ought to be and should be acquainted with the rudiments of philosophical determinism.

³⁴Criminal Code Act, Cap C38, vol.4, Laws of the Federation of Nigeria (LFN) 2004. Which inter-alia states thus: A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things, is not criminally responsible for the act or omission to any greater extent than if the real state of the things had been such as he believed to exist.

³⁵ G. J. Yalaju, *Introduction to International Humanitarian Law* (Gabrason Printing Press, 2004)

³⁶ Criminal Code Act, CapC38, vol.4, Laws of the Federation of Nigeria (LFN) 2004.

³⁷ *Ibidem*.